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CANADIAN CRIMINAL JUSTICE ASSOCIATION - 2020 - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

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The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

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L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

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EDITORIAL

IRVING KULIK
CCJA Executive Director

As I write this editorial on May 3, most of us have been housebound for most of the past seven weeks. We are all aware of the unprecedented nature of the COVID-19 virus which has essentially shuttered the world. I trust you have followed public health admonitions and fortunately maintained your physical health. We cannot forget all the other pressures being brought on: economic, educational, familial, and a host of others that researchers will be writing about in the years to come. Probably like many of you I have heard from friends and relatives who are challenged by the emotional and mental impacts of having one's freedoms so limited, feeling like they are prisoners in their own home. Try to imagine what a lifetime in a real prison feels like.

In today's world of social distancing it is hard to imagine that six months ago more than 500 participants at Congress 2019 in Quebec City crowded around the bar, in break-out sessions or at meals, without leaving 6 feet between them and their colleagues. Hopefully however, we will soon be back to what we know as normal. Humans are social beings and we strive for contact, conversation and interaction with others. We may have learned Zoom technology as well as Skype and FaceTime, but these should be complimentary and not replacements for normal relationships.

In spite of today's challenges we are optimistic about the future. In this regard I am happy to announce we are launching the Call for Papers for Congress 2021: "No One Left Behind: Building Community Capacity".

This, our 38th Congress, will be a partnership event with the 5th World Congress on Probation and Parole. We are particularly excited to be collaborating on this congress with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police. It will be an opportunity to showcase Canadian criminal justice expertise and knowledge to a world audience, right from our nation's capital, Ottawa.

We urge you all to reserve this date on your calendars:

SEPTEMBER 28 – OCTOBER 1, 2021

5th World Congress on Probation and Parole

"No One Left Behind: Building Community Capacity"

Delta Hotel, Ottawa City Centre

In the meantime let us all hope that health soon returns to the world so that we can all get back to our own important work without fear.

Stay safe, stay healthy. ■

ÉDITORIAL

IRVING KULIK
Directeur général de l'ACJP

Au moment où j'écris cet éditorial, le 3 mai, la plupart d'entre nous ont été confinés pendant la majeure partie des sept dernières semaines. Nous connaissons tous la nature sans précédent du virus COVID 19 qui a essentiellement fermé le monde entier. Vous avez sans doute écouté les avertissements de santé publique et, par bonheur, conservé votre santé physique. Nous ne pouvons oublier toutes les autres pressions qui en découlent : économiques, scolaires, familiales et bien d'autres sur lesquelles écriront les chercheurs au cours des prochaines années. Comme beaucoup d'entre vous probablement, j'ai entendu des amis et des parents qui sont confrontés à l'impact émotionnel et mental d'une liberté si limitée et qui se sentent prisonniers de leur propre maison. Essayez d'imaginer à quoi ressemble une vie dans une vraie prison.

Dans le monde de distanciation sociale d'aujourd'hui, il est difficile d'imaginer qu'il y a six mois plus de 500 participants au Congrès 2019 à Québec s'entassaient autour du bar, dans des séances en ateliers ou lors de repas, sans laisser 2 mètres entre eux et leurs collègues. Avec chance, toutefois, nous reviendrons à ce qui était normal. Les humains sont des êtres sociaux, et nous cherchons à entrer en contact, à converser et à interagir avec les autres. Nous avons peut être appris la technologie Zoom ainsi que Skype et FaceTime, mais ces technologies devraient compléter et non pas remplacer les relations normales.

Malgré les défis d'aujourd'hui, nous sommes optimistes à l'égard de l'avenir. À ce sujet, je suis heureux d'annoncer que nous lançons l'appel de communication pour le Congrès 2021 :

« Ne laisser personne de côté : renforcer la capacité communautaire »

Ce congrès, notre 38e, sera un évènement en partenariat avec le 5e Congrès mondial sur la probation et la libération conditionnelle. Nous sommes particulièrement ravis de collaborer à ce congrès avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada. Ce sera une occasion de mettre en valeur l'expertise et les connaissances du Canada en matière de justice pénale auprès du monde entier, à partir de notre capitale nationale, Ottawa.

Inscrivez ces dates à votre calendrier :

DU 28 SEPTEMBRE AU 1ER OCTOBRE 2021

5e Congrès mondial sur la probation et la libération conditionnelle

« Ne laisser personne de côté : renforcer la capacité communautaire »

Delta Hotel, centre ville d'Ottawa

D'ici là, espérons que la santé revienne bientôt dans le monde afin que nous puissions tous reprendre notre travail important sans peur.

Protégez vous. Protégez votre santé. ■

Organized by the Canadian Criminal Justice Association in collaboration with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police.

Organisé par l'Association canadienne de justice pénale en collaboration avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada.

CALL FOR PAPERS

World Congress on Probation and Parole 2021

No One Left Behind: Building Community Capacity

September 28th - October 1, 2021 | **Delta Hotel - Ottawa (Ontario) Canada**

Please submit your proposals to CCJA by email (ccja- acjp@rogers.com), fax (+1 (613) 725-3720), or post (320 Parkdale Avenue, Suite #101, Ottawa (Ontario) Canada K1Y 4X9).

You are cordially invited to submit an abstract for a presentation at the 5th World Congress on Probation and Parole!

This international event is being organized by the Canadian Criminal Justice Association in collaboration with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police. It will be held at the Delta Hotel in Ottawa, Ontario, Canada. Consider attending this networking opportunity to learn about the latest in probation and parole around the world.

The theme of the event will be "**No One Left Behind: Building Community Capacity**". This Congress will explore the challenges, opportunities and success stories involved in building community capacity and sustaining partnerships that support successful reintegration for diverse groups of offenders in an evolving global environment.

Academics, researchers, students, community-based organizations, practitioners, and policy leaders are invited to submit presentation proposals relating to one or more of the sub-themes listed below. Please note that elements within the sub- themes are not exclusive. Other subjects can be added if they are connected to the main theme of "No One Left Behind: Building Community Capacity".

CALL FOR PAPERS

World Congress on Probation and Parole 2021

No One Left Behind: Building Community Capacity

September 28th - October 1, 2021 | **Delta Hotel - Ottawa (Ontario) Canada**

Please submit your proposals to CCJA by email (ccja- acjp@rogers.com), fax (+1 (613) 725-3720), or post (320 Parkdale Avenue, Suite #101, Ottawa (Ontario) Canada K1Y 4X9).

Sub-Themes

- Offenders with mental health needs
- Over-represented minorities
- Elderly offenders
- Disabled offenders
- Indigenous offenders
- High-risk offenders
- Staff training
- Building community capacity
- Partnerships
- Women offenders
- Radicalized offenders
- Young offenders
- Long-term offenders
- Public awareness strategies

Presentation Types

- WORKSHOPS
- SHORT PRESENTATIONS
- SCHOLARLY POSTER PRESENTATIONS
- DOCUMENTARIES, SHORT FILMS, PODCASTS

Organized by the Canadian Criminal Justice Association in collaboration with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police.

APPEL DE COMMUNICATION

5e Congrès mondial sur la probation et la libération conditionnelle

Ne laisser personne de côté : renforcer la capacité communautaire

28 septembre au 1 octobre 2021 — **Delta Hotel - Ottawa (Ontario) Canada**

Veuillez présenter votre proposition à l'ACJP par courriel (ccja- acjp@rogers.com), par télécopieur (+1 613 725 3720) ou par la poste (320, avenue Parkdale, bureau 101, Ottawa (Ontario) Canada K1Y 4X9).

Vous êtes cordialement invités à présenter un résumé de présentation dans le cadre du 5e Congrès mondial sur la probation et la libération conditionnelle!

Cet évènement international est organisé par l'Association canadienne de justice pénale, en collaboration avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada. L'évènement se tiendra au Delta Hotel, à Ottawa, en Ontario, au Canada. Pensez à participer à cette occasion de réseautage pour en savoir davantage sur les dernières avancées en matière de probation et de libération conditionnelle partout dans le monde.

Le thème de l'évènement sera « **Ne laisser personne de côté : renforcer la capacité communautaire** ». Dans le cadre de ce Congrès, on abordera les défis, les possibilités et les réussites touchant le renforcement de la capacité communautaire et le maintien de partenariats qui favorisent la réintégration efficace de divers groupes de délinquants dans un contexte mondial en évolution.

Des universitaires, des chercheurs, des étudiants, des organisations communautaires, des intervenants et des dirigeants politiques sont invités à présenter des propositions de présentation liée à l'un ou à plusieurs des sous-thèmes énumérés plus bas. Veuillez noter que les éléments des sous-thèmes ne sont pas exclusifs. D'autres sujets peuvent être ajoutés s'ils sont liés au thème principal « Ne laisser personne de côté : renforcer la capacité communautaire ».

APPEL DE COMMUNICATION

5e Congrès mondial sur la probation et la libération conditionnelle

Ne laisser personne de côté : renforcer la capacité communautaire

28 septembre au 1 octobre 2021 — **Delta Hotel - Ottawa (Ontario) Canada**

Veuillez présenter votre proposition à l'ACJP par courriel (ccja- acjp@rogers.com), par télécopieur (+1 613 725 3720) ou par la poste (320, avenue Parkdale, bureau 101, Ottawa (Ontario) Canada K1Y 4X9).

Sous-thèmes

- Délinquants ayant des besoins en santé mentale
- Minorités sur-représentées
- Délinquants âgés
- Délinquants handicapés
- Femmes délinquantes
- Délinquants radicalisés
- Formation du personnel
- Délinquants à risque élevé
- Partenariats
- Renforcement de la capacité communautaire
- Délinquants autochtones
- Jeunes délinquants
- Délinquants à contrôler
- Stratégies de sensibilisation du public

Types de présentation

- ATELIERS
- BREFS EXPOSÉS
- PRÉSENTATION D'AFFICHES DE CHERCHEURS
- DOCUMENTAIRES, COURTS MÉTRAGES, BALADOS

Organisé par l'Association canadienne de justice pénale en collaboration avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada.

Manitoba Criminal Justice Association (MCJA) Crime Prevention Breakfasts

MIKE COOK
Manitoba Criminal Justice President and Defence Counsel at SCVC Law

In this letter about MCJA's annual Crime Prevention Breakfast (2019), an event held each November in Winnipeg, Mike Cook - MCJA President and Defence Counsel at SCVC Law - reports on the success of a new format employed at the 2019 Breakfast, where four speakers were given the floor to offer their respective perspectives on a theme of Community Involvement in Public Safety: Mr. James Favel, the Director of Winnipeg's Bear Clan Organization; Dr. Hygiea Casiano, a prominent Winnipeg Psychiatrist; Ms. Kate Kehler, a popular speaker having had many roles within various social organizations helping ensure the needs of those who come into conflict with the law are being met; and, Chief Danny Smyth, Chief of the Winnipeg Police Service. The 2019 Breakfast was very well received, and Mr. Cook urges those who will be in Winnipeg this coming November to visit the MCJA website (www.mcja.ca) and purchase tickets for MCJA's 2020 Crime Prevention Breakfast.

November is crime prevention month in the Province of Manitoba. Each year the Province proclaims November as crime prevention month and MCJA recognizes it with our annual Crime Prevention Breakfast.

This year the MCJA presented a very different format for our Crime Prevention Breakfast.

In past years we utilized a one-speaker format for the morning. While that format met with great success over the years, last fall we decided around the board room table to opt for a new, innovative approach by which four (4) separate speakers share the stage with their respective perspectives.

The topic for the MCJA breakfast was "Community Involvement in Public Safety", and we had four (4) fabulous speakers, each speaking from a very different standpoint.

The first speaker was Mr. James Favel, Director of Winnipeg's Bear Clan organization. The Bear Clan is an important component of crime prevention for our city. Dedicated men and women from the Clan assist the community greatly by walking the streets of the North End each and every night to do such wonderful things as look for missing persons, help those in need, and clean up used condoms and hypodermic needles around the neighbourhood.

Dr. Hygiea Casiano is a prominent Winnipeg psychiatrist. She talked about medical intervention to assist both youths and adults coping with drug and/or alcohol addictions and those with an underlying mental health issue. Dr. Casiano spoke to the type of treatment available and how the clients we serve can greatly benefit from medical intervention.

Ms. Kate Kehler is a very popular speaker. She has had many roles within various social organizations that have assisted people who come into conflict with the law and need more than incarceration, such as assistance to help them with everyday necessities like shelter, food, medical attention and counselling in the community.

The last speaker was Chief Danny Smyth, Chief of the Winnipeg Police Service. Chief Smyth talked about the problem Winnipeg is having with the proliferation of crystal methamphetamine and the dire consequences it has on those who are addicted to the drug as well as their families. Chief Smyth talked about how the Winnipeg Police is working very actively with all three levels of government in an effective strategy aiming to reduce the number of methamphetamine crimes.

MCJA's Crime Prevention Breakfast and Public Education

The Crime Prevention Breakfast is MCJA's key platform for public education. We proudly present the breakfast the first week of every November and invite all three levels of the Judiciary, the Crown Attorneys who prosecute cases, the Defence bar, Parole Services, Probation Services, Treatment Centres, Psychiatrists, Psychologists, Shelter Personal and families and friends of people being affected by the topic of the day. This year's conference was very well received by an approximate 220 attendees. The funds raised from the breakfast help us present other programs in the community at smaller venues throughout the year.

Don't Miss MCJA's 2020 Crime Prevention Breakfast! Smith Corona Van Dongen & Cook (SCVC) is proud to participate in furthering community engagement by assisting the MCJA in its many functions, including the annual Crime Prevention Breakfast. The MCJA Board is currently busy putting together plans for the November 5, 2020 Crime Prevention Breakfast. If you are in Winnipeg at the time, please go to our website (www.mcja.ca/) and purchase tickets. You will not be disappointed.

Yours truly, Mike Cook ■

CONTACT MIKE COOK AT:

info@mcja.ca;
mcook@scvlaw.ca

RÉSUMÉ

Manitoba Criminal Justice Association (MCJA) Crime Prevention Breakfasts

MIKE COOK
Président de l'Association de la justice pénale du Manitoba

Dans cette lettre sur le Déjeuner causerie annuel sur la prévention du crime de l'Association de la justice pénale du Manitoba (MCJA), un évènement tenu chaque novembre à Winnipeg, le président de ka MCJA, Mike Cook, rend compte du succès d'un nouveau format employé au Déjeuner causerie de 2019, où l'on a donné la parole à quatre conférenciers afin qu'ils présentent leurs perspectives respectives sur un thème de participation communautaire à la sécurité publique : M. James Favel, directeur de la l'organisation du Bear Clan de Winnipeg, Mme Hygiea Casiano, psychiatre de renom de Winnipeg, Mme Kate Kehler, conférencière prisée ayant joué de nombreux rôles dans diverses organisations sociales visant à garantir qu'on répond aux besoins des personnes ayant des démêlés avec la justice, et le chef Danny Smyth, chef du Service de police de Winnipeg. Le Déjeuner causerie de 2019 a été très bien accueilli, et M. Cook incite les personnes présentes à Winnipeg en novembre prochain à visiter le site Web de la MCJA (www.mcja.ca) et à acheter des billets pour le Déjeuner causerie sur la prévention du crime de 2020 de la MCJA.

The Real Divide: When Alberta's Criminal Justice Policy is More Progressive than that of the Trudeau Government

ANTHONY N. DOOB & CHERYL MARIE WEBSTER

Anthony N. Doob is a Professor Emeritus of Criminology at the University of Toronto.
Cheryl Marie Webster is a Professor of Criminology at the University of Ottawa.

The authors, Dr. Anthony Doob, a member of the Order of Canada, and Dr. Cheryl Webster, decry the fact that over the course of the last two decades criminal justice policies have increasingly been based on short-term political interests rather than a desire for comprehensive, principled, and thoughtful criminal justice reform. They suggest that, in the past, principled law reform was created under both dominant political parties. Currently, it would appear that the Conservatives and the Liberals alike have lost their will and/or ability to create coherent sensible criminal justice policy. As an example of how criminal justice policy-making has changed, they describe the administrative actions of former Alberta Premier Ralph Klein's Conservative government in the 1990s when Alberta effectively reduced incarceration at provincial facilities by 32%. Notably, this decarceration was accomplished without any changes to laws, using administrative policies alone. Doob and Webster contrast the values-based criminal justice policies of past governments which were often evidence informed, with today's approach which appears to be primarily based on immediate, short-term political considerations. Canada has always had some justice policies that were rooted largely in political considerations rather than thoughtful analysis of criminal justice issues. What has changed is that thoughtful policy development has all but disappeared. The question for Canadians, in the 2020s, is whether we will ever again witness the principled, thoughtful criminal justice policy development that had defined us for over a century.

The difference is that was then, this is now.
– E. Hinton (1971)

For those who might think that party politics in Canada provides a useful way of categorizing the criminal justice policies of the various political parties, our title might be somewhat perplexing. Particularly when the discussion turns to 'tough-on-crime' strategies in which the use of imprisonment is promoted as the sanction *par excellence*, it is a natural assumption that the Conservatives will dominate the conversation. Take, for example, the 2006 election platform of one national political party which introduced its section on "making Canada's communities safer" with the following proposals: (1) Arm border officers; (2) Increase mandatory minimums for certain firearms offences; (3) Add 4-year mandatory minimum prison sentences for all weapons offences; and (4) Presumptively try in adult court all 16- & 17-year-olds charged with offences using firearms. Clearly a Conservative initiative, right? In fact, it was part of Jack Layton's NDP promise to introduce its own "Omnibus Safe Communities Act".

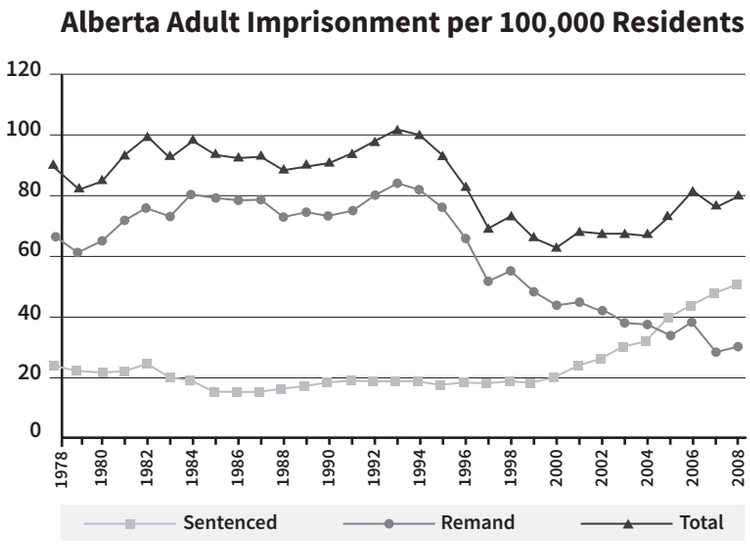
Similarly, the Liberal Party promised in the 1993 federal election to reform the *Young Offenders Act*

to *increase* sentence lengths for certain violent crimes and create the designation of "dangerous young offender." But a mere ten years later, this same party was also responsible for passing the *Youth Criminal Justice Act* which contributed to a dramatic *reduction* in youth incarceration. Even if one were to restrict one's gaze to the same time period, Kim Campbell's Conservatives affirmed in 1993 that "True safety and security are based in caring homes, good schools, shared values and communities where people care about and reach out to one another. The answer does not lie in simply building more prisons and getting more police. If that were true, then the United States would be the safest place on Earth".

An astute historian might counter with the reminder that Campbell's federal Conservative Party was decimated in that same election. Yet criminal justice history was being made in Alberta during the same year by another Conservative politician – Ralph Klein. In 2020, few need to be reminded that Alberta is generally recognized as one of the most Conservative provinces in Canada. In 20 of 23 federal elections in the past 70 years, 80% or more of the elected MPs were conservatives (under various party names). Klein became premier of Alberta in late 1992. In June 1993, Klein's Conservatives were elected with a smaller majority ("only" 61% of the seats) than in any of the previous 12 elections.

Nevertheless, his government implemented criminal justice policies that would lead to a 32% reduction in Alberta's provincial imprisonment rate (sentenced and remand) between 1993-1997 (see Figure 1). Notably, this significant drop was accomplished without any change in criminal justice legislation. In the rest of Canada, there was a tiny drop (2.6%) in provincial imprisonment rates. Clearly what happened in Alberta was different. Importantly, it wasn't that Alberta's courts were handing down more federal penitentiary (rather than provincial) sentences. In fact, warrant of committal admissions to penitentiary in the prairie region decreased during this period. Similarly, conditional sentences of imprisonment could not account for the change as they were unavailable before 1996. Rather, provincial criminal justice policy – and the efforts of many people in the provincial government – were clearly responsible. In particular, the reduction in imprisonment was accomplished through administrative changes such as the more selective prosecution of minor offences, the use of alternative measures instead of full prosecution, the prioritization of community sanctions over prison, and a more liberal use of temporary absences from prison.

FIGURE 1.
Dramatic Reduction in Alberta's Provincial Imprisonment Rate (Sentenced and Remand) in the 1990s



SOURCE. Adapted from Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century. Office of Juvenile Justice and Delinquency Prevention. Office of Justice Programs. U.S. Department of Justice. (1997). Table 11 – p. 15. Retrieved from www.ncjrs.gov/pdffiles/framwork.pdf

This dramatic and – from almost any perspective – progressive change in criminal justice policy is even more notable when placed within its wider context. While the goal of containing or reducing imprisonment was shared by all provinces and federal government at the time, it was Alberta's conservative government that was actually successful in achieving it. Indeed, all federal/provincial/territorial Ministers responsible for Justice had endorsed – in May 1996 - 11 recommendations for dealing effectively with growing prison populations. These proposals included increased diversion, increasing charge screening that "will ensure that criminal justice resources are focused on those most in need of control and correctional treatment", and using

incarceration more selectively. Symptomatically, these recommendations were published in a federal/provincial/territorial report that, at the time, was not even newsworthy.

In sharp contrast, Justin Trudeau's government has very little to show, in its first term in office, in the area of criminal justice policy development. Despite having a majority government, a mere 13 "crime" bills were introduced and received Royal Assent. Further, one of its first successful pieces of criminal justice legislation simply added the words "gender identity and expression" to the groups that might be subject to hate propaganda (under s. 318(4) of the Criminal Code) and the same words to the non-exhaustive list of groups whose targeting would constitute an aggravating factor in sentencing. While few would oppose these changes, they are largely symbolic in nature. Similarly, although one would be hard pressed to argue against an expanded definition of bestiality (a central feature of another successful bill), most would likely find it considerably harder to understand why this criminal offence was a Liberal priority. Of the 2,204,812 incidents reported to the police in 2017, a mere 13 involved bestiality. More notably, the police laid a charge in only one of them.

Other criminal justice decisions by this government were more contentious. One might think, for example, of the elimination of the availability of preliminary hearings and peremptory challenges for most offences. Or the more glaring decision by this majority government to avoid any legislative proposals which might have begun to chip away at the 'tough-on-crime" agenda of the prior Conservative government. Indeed, even such easily defined problems as mandatory minimum sentences or restrictions on the availability of pardons were seemingly left to be fought in court rather than addressed through legislative change. While one can certainly argue about the value of the details of the Trudeau government's crime bills, it would be impossible to suggest that they constitute an important or serious attempt to bring about progressive criminal justice reform.

We might suggest that the real distinguishing factor underlying the criminal justice policies of Klein's provincial government and Trudeau's federal government lies not in their party politics but in their historical context. Specifically, we propose that the contrast of these two approaches to crime/criminals provides a valuable window into criminal justice policy development in Canada more broadly. Simply put, Canadian governments would appear to have adopted a different way of doing (criminal justice) business over the last several decades. Given the popularity of Twitter, perhaps we shouldn't be surprised. However, we would do well to recognize the consequences – not only for good social policy but also – and perhaps especially – in terms of the ways in which we have traditionally defined ourselves on the national as well as international stage.

Gone are the days in which criminal justice policy was informed by comprehensive reviews of the criminal law. When tasked with the examination of Canadian *corrections*, the "Ouimet Committee" intuitively understood the value of studying it in its widest sense, beginning with the investigation of offences through to the reintegration of prisoners into society. Its 505-page report – released in 1969 - not only covered the most important and contentious areas of the justice system but, more importantly, encouraged thoughtful and coherent criminal justice legislation. In a similar timeframe (less than 4 years), the much more focused 1987 Canadian Sentencing Commission report took 592 pages to examine sentencing and conditional release while the 1988 House of Commons Justice Committee report on the same issues took a mere 327 pages! In fact, the 20th century is filled with Commissions, Committees, and Reports that recognized the need to assess any legislative change within its broader context.

This era also saw the creation of numerous comprehensive and thoughtful – though not necessarily 'perfect' – pieces of criminal justice legislation. For example, the Conservatives introduced and passed the original *Corrections and Conditional Release Act* in 1992 - reform that had been developed as a result of a more-than-decade-long "Correctional Law Review". Similarly, the sentencing legislation and the new *Controlled Drugs and Substances Act* in the mid-1990s were attempts to look at areas of the criminal law comprehensively and in an integrated fashion. Further, the replacement of the *Young Offenders Act*

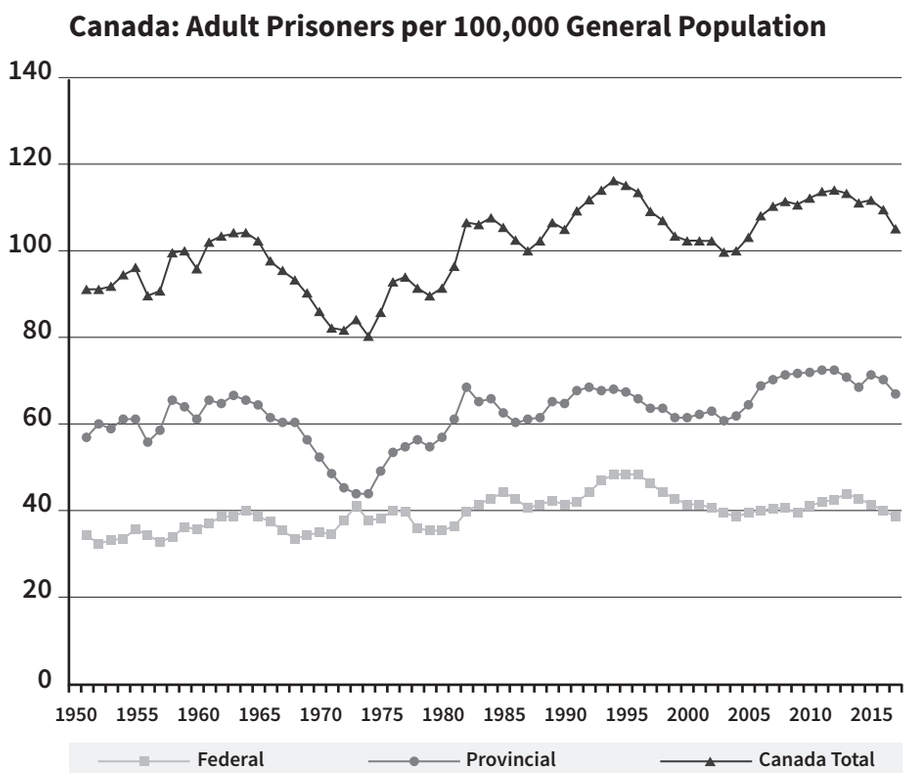
with the *Youth Criminal Justice Act* (which came into force in 2003) had dramatic impacts on the criminal processing of youths.

Contrast this established tradition with the Liberal Minister of Justice's response to the November 2015 'mandate letter' which required her to "conduct a review of the changes in our criminal justice system and sentencing reforms over the past decade with a mandate to assess the changes, ensure that we are increasing the safety of our communities, getting value for money, addressing gaps and ensuring that current provisions are aligned with the objectives of the criminal justice system". Taking just under 4 years to complete, the Trudeau government's 2019 report is self-described as being a "comprehensive review – the first of its kind since 1982". In a world dominated by 140 (or now 280) character Twitter messages, its 10½ pages (or, to be fair, 16 pages if one counts the cover, copyright page, table of contents, the Minister's message, and the blank, but numbered, page at the end) gives a curious meaning to the word 'comprehensive'.

The result is what we know. In the four years of a majority government, there was no indication of an appetite for either comprehensive criminal justice change broadly or even comprehensive review/change in specific areas of the law (e.g., the availability of pardons) that desperately need examination. Taking the Trudeau government's mandate letter for the Minister of Justice together with the legislation that was introduced and/or passed between 2015-2019, this government is seemingly wandering in the wilderness of criminal justice policy. For instance, the 2015 mandate letter orders the *Minister of Justice*, among other things, to address the use of solitary confinement in Canada's penitentiaries. The Prime Minister's office was apparently unaware of the fact that federal corrections has been the responsibility of the Solicitor General (now the Minister of Public Safety) for over half a century.

But also gone are the days in which criminal justice policy was driven predominantly (albeit not always) by broader cultural values. In particular, Canada has consistently shown deep skepticism about imprisonment as an appropriate response to crime/criminals. In fact, the predominant leitmotif running through Canadian criminal law and the numerous formal reviews and statements of criminal justice policy addressing the issue of criminal sanctions over the 20th century is clearly that of an official belief in the principle of restraint in the use of prison. While Klein's motivation to decarcerate during the 1990s was primarily fiscal (rooted in a public promise to balance Alberta's budget by cutting costs rather than increasing revenue), it could not have happened without an underlying set of social values that supported the reduced use of imprisonment. Indeed, decreasing incarceration rates had political support. As Alberta's then justice minister expressed, "…there are other ways of dealing with some of the criminal activity that goes on that are more effective than putting a person in

FIGURE 2.
Canada's Adult Imprisonment Rate, 1951-2017



jail…". Specifically, he suggested that "non-violent provincial inmates should be out of jail and working in the community". Notably, he was not nervous about these administrative choices.

It is true that criminal justice policy has likely always been susceptible to short-term political needs that, if anything, run counter to good social policy. Illustratively, the Liberals brought in mandatory minimum penalties for certain firearms offences in the 1990s, as well as added restrictions to what was then known as the faint hope clause which allowed juries to consider reducing the parole ineligibility period for those convicted of murder. Yet until recently, these specific types of politically motivated legislation were balanced with more thoughtful, principled changes. Indeed, longstanding cultural values of restraint in the recourse to prison have repeatedly informed possible solutions to social problems. Even under the 'tough on crime' Harper government that used criminal justice policy to appeal to its 'base' (to use a term popular in the Trump era of world history), these Conservatives did not pass laws that created large increases in imprisonment for large numbers of people. In fact, Canada's overall imprisonment rate has been relatively stable for over 60 years, even during as well as following the Harper decade (see Figure 2).

But the future – under *any* government – may be different. None of the major national political parties currently can be counted on to promote thoughtful, principled, coherent and comprehensive criminal justice policy. Rather, legislative change in this area has largely been reduced to mere tinkering with the system, often driven by short-term political interests that sacrifice longstanding values that have defined us for over a century. In brief, it would seem that we are 'doing' criminal justice policy differently. It is, therefore, anyone's guess what else might change as we go forward. We may not be ready to jump on the 'tough-on-crime' bandwagon which has defined our closest comparators – the US and England/Wales – over the last several decades (at least in terms of rising imprisonment rates). However, the window of opportunity to reaffirm (and perpetuate) our international reputation as a nation characterized by relative moderation in the use of imprisonment may be closing quickly. Indeed, there will soon be no one left who remembers how to be thoughtful about criminal justice policy. ■

SUGGESTED FURTHER READING:

Webster, Cheryl Marie and Anthony N. Doob (2014). Penal Reform 'Canadian Style': Fiscal Responsibility and Decarceration in Alberta, Canada. *Punishment & Society 16*(1): 3-31.

Webster, Cheryl Marie, Jane B. Sprott and Anthony N. Doob (2019). The Will to Change: Lessons from Canada's Successful Decarceration of Youth. *Law & Society Review 53*(4): 1092–1131.

Doob, Anthony N. and Cheryl Marie Webster (2016). Weathering the Storm? Testing Longstanding Canadian Sentencing Policy in the 21st Century. *Crime and Justice: A Review of Research 45*: 359-418. (Michael Tonry, editor)

Doob, Anthony N. and Cheryl Marie Webster (Autumn, 2015) The Promise Ahead: Using the Past to Guide Reforms of Canada's Criminal Justice System. *Justice Report* (Canadian Criminal Justice Association) *30*(4): 6-9.

RÉSUMÉ

The Real Divide: When Alberta's Criminal Justice Policy is More Progressive than that of the Trudeau Government

ANTHONY N. DOOB ET CHERYL MARIE WEBSTER

Les auteurs, M. Anthony Doob, membre de l'Ordre du Canada, et Mme Cheryl Webster, PhD., déplorent le fait que depuis les deux dernières décennies, les politiques en matière de justice pénale sont de plus en plus fondées sur les intérêts politiques à court terme plutôt que sur un désir d'une réforme de la justice pénale intégrale, réfléchie et fondée sur des principes. Les auteurs suggèrent que, dans le passé, la réforme du droit fondée sur des principes a été créée par les deux partis politiques dominants. Actuellement, il semblerait que tant les Conservateurs que les Libéraux ont perdu leur volonté ou leur capacité de créer une politique de justice pénale cohérente et sérieuse. Pour illustrer la manière dont l'élaboration de politiques en matière de justice pénale a changé, les auteurs décrivent les mesures administratives du gouvernement conservateur de l'ancien premier ministre de l'Alberta, Ralph Klein, dans les années 1990. L'Alberta est parvenue à réduire de 32 % l'incarcération dans les établissements provinciaux. Surtout, cette diminution a été réalisée sans modifier les lois, simplement en ayant recours à des politiques administratives. M. Doob et Mme Webster comparent les politiques de justice pénale fondées sur les valeurs des gouvernements précédents, souvent éclairées par des données probantes, avec l'approche d'aujourd'hui qui semble principalement axée sur des facteurs politiques immédiats et à court terme. Certaines politiques de justice pénale du Canada ont toujours été fondées en grande partie sur des facteurs politiques plutôt que sur une analyse approfondie des enjeux de justice pénale. Ce qui a changé, c'est que l'élaboration réfléchie de politiques a tout sauf disparue. La question que doivent se poser les Canadiens, dans les années 2020, est à savoir si nous verrons à nouveau une élaboration des politiques en matière de justice pénale réfléchie et fondée sur des principes qui nous avait définis pendant plus d'un siècle.

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JOURNAL OF THE INTERNATIONAL CORRECTIONS AND PRISONS ASSOCIATION

SUBMIT BY **July 30th 2020**

AIMS AND SCOPE OF ADVANCING CORRECTIONS

The ICPA believes that development of a professional and humane corrections should be grounded in evidence. Respect for evidence is a hallmark of the ICPA. Our new semi-annual *Journal Advancing Corrections* is intended to fill the need for researchers to speak more clearly to practitioners and practitioners to speak in a more evidence-informed way to their colleagues. For each Edition, the Journal invites submissions focusing on a particular **theme** and that can be digested and appreciated by practitioners, managers, policy-makers and other correctional professionals.

THEME FOR THE 10th EDITION

As the Call for Papers for this 10th Edition of *Advancing Corrections* is being issued, our world is being gripped by a global pandemic that will have deep though still uncertain repercussions for many aspects of our lives. The physical, mental and economic 'RISK' this virus poses has created a contagion of its own as discomforting anxiety and even panic spreads uncontrollably. The world is becoming suddenly very familiar with the notion of 'RISK' – trying desperately to understand this virus better, figure out how to assess it more easily and accurately, manage it in different contexts, and hopefully mitigate and reduce its impact. Although certainly at a different level and for different reasons, corrections professionals have had to routinely focus on *Understanding, Assessing, Managing and Reducing RISK* in their daily work for many years. This Edition of *Advancing Corrections* will be devoted to examining how well our field has advanced in dealing with RISK.

We want to hear from both researchers and practitioners and we welcome both evidence and practice-informed discussions about how notions of RISK can be incorporated more effectively into practice. The focus of papers can range from:

- Scholarly discussions regarding how we can better conceptualize and understand RISK, including RISK other than RISK of re-offending;
- Evidence-informed frameworks for understanding RISK that go beyond the traditional criminogenic RNR paradigm;
- Quantitative or qualitative research highlighting issues in how we assess RISK, and especially in examining the fairness and validity of our assessment tools for different populations (e.g., ethnic minorities, women);
- Research on the impact of professional development and/or specialist training of staff to incorporate RISK assessment into their decision-making;
- The range of issues faced in monitoring and responding to RISK both in prisons and under community supervision;

- Description of innovative approaches for managing and reducing RISK in particular jurisdictions, including research on improving assessment procedures, case management and/or sentence planning, programming or other broader service-delivery strategies;
- Attention to practice-culture and correctional environment issues more generally as effective ways to reduce or mitigate RISK;
- Any other correctional innovation, including application of new technology, which illustrates a purposeful strategy for more humane management of RISK; and last but not least,
- The voice of practitioners, researchers, senior corrections executives and administrators regarding 'lessons learned' in dealing with the public and political backlash when our RISK management strategies fail.

In summary, what we are looking for are clear examples of how our application of RISK concepts can have direct and practical implications for improving corrections operations and effectiveness, either in the prison or the community context.

HOW SHOULD YOU SUBMIT YOUR PAPER?

Manuscripts should follow the *Guidelines for Authors* for the Journal. Suggested page length is from 7 to 15 pages (about 2,000 to 5,000 word-count), although lengthier research-oriented manuscripts or reviews may be considered based on merit. Papers should be respectful of evidence but they should be written in a way that appeals to practitioners. Manuscripts should be submitted electronically to **Dr. Frank Porporino**, Ph.D., Chair of the ICPA Research and Development Network and Editor of Advancing Corrections (fporporino@rogers.com). A copy should also be forwarded to the ICPA Communications Officer, **Aleksandar Petrov**, at the ICPA Head Office (aleksandarpetrov@icpa.ca).

WHAT WILL HAPPEN TO YOUR PAPER?

Advancing Corrections has an international Editorial Review Board and submitted papers **will undergo a formal and rigorous 'peer review' process**.

Please note that we will not accept papers that simply attempt to promote a particular product or market a particular method or service without supportive evidence of effectiveness. *Advancing Corrections* is not a marketing vehicle. It is a professional Journal intended to broaden our knowledge base in corrections.

If you believe that evidence and facts should be the drivers for change in corrections rather than ungrounded opinion or ideology, please make an effort to support this ICPA initiative.

L'état du système de justice pénale : un cadre de surveillance du rendement pour le système de justice pénale du Canada

MINISTÈRE DE LA JUSTICE DU CANADA

Le ministère de la Justice du Canada (le Ministère) a créé le premier cadre de surveillance de rendement pour le système de justice pénale du Canada (SJP). Lancé en mai 2019, le Cadre de l'état du système de justice pénale (le Cadre) accroît notre capacité globale de surveiller, et donc de comprendre, comment le système de justice pénale fonctionne pour savoir si ses objectifs multiformes sont atteints. L'information recueillie est accessible au public sous différentes formes, comme le rapport annuel ou le tableau de bord interactif en ligne – tous deux disponibles à www.justice.gc.ca/fra/jp-cj/etat-state/index.html.

Le Cadre de l'état du système de justice pénale (le Cadre) a été créé par le ministère de la Justice du Canada (le Ministère) en tant que premier cadre de surveillance de rendement pour le système de justice pénale du Canada (SJP). Le Cadre vise à accroitre notre capacité globale de surveiller, et donc de comprendre, comment le système de justice pénale fonctionne pour savoir si ses objectifs multiformes sont atteints.

Le Cadre se fonde sur des recherches et des commentaires détaillés issus de consultations[1] en plusieurs étapes menées auprès des partenaires du SJP, d'intervenants, d'experts et du public canadien. Le Cadre comprend actuellement neuf résultats attendus généraux pour le SJP qui sont mesurés par 41 indicateurs de rendement à l'échelle nationale. Pour certains indicateurs, le Cadre détermine une orientation ciblée aux fins d'amélioration (p. ex., augmentation, diminution ou neutre[2]). Les neuf résultats attendus de l'état du système de justice pénale sont les suivants :

- Les Canadiens sont en sécurité et les personnes et leur famille se sentent en sécurité.
- Le système de justice pénale est juste, équitable et accessible à tous les citoyens.
- Les Canadiens comprennent le rôle du système de justice pénale et y font confiance.
- Le système de justice pénale fonctionne efficacement.
- Le système de justice pénale favorise et appuie la déjudiciarisation, la justice réparatrice, la justice autochtone et les outils pour le règlement communautaire des conflits.
- Le système de justice pénale offre aux personnes détenues sous garde des services et des soutiens pour assurer leur réhabilitation et les réintégrer dans la communauté.
- Le système de justice pénale respecte les droits des victimes et des survivants et répond à leurs besoins.
- Le système de justice pénale réduit le nombre d'Autochtones dans le système.
- Le système de justice pénale réduit le nombre de personnes marginalisées et vulnérables dans le système.

Un rapport annuel de l'état du système de justice pénale et un tableau de bord interactif en ligne ont été créés pour présenter des données et des renseignements tirés du Cadre. La première version du rapport annuel et du tableau de bord a été publiée en mai 2019. Ces produits visent à faciliter l'accès du public à une multitude d'ensemble de données et d'indicateurs variés et complexes du SJP et à en faciliter la compréhension. Ils permettent aussi d'obtenir des renseignements sur le rendement concernant le SJP en un seul emplacement central.

Plus précisément, le rapport annuel présente des données quantitatives sur des indicateurs sélectionnés tirés du Cadre. Les indicateurs figurant dans le rapport annuel sont fondés sur des conclusions dignes de mention et sur les données disponibles pour l'année précise.

Le tableau de bord en ligne présente tous les renseignements sur le Cadre. Il présente les renseignements et les données recueillis pour les 41 indicateurs de rendement groupés par les neuf résultats. Les renseignements peuvent être visualisés de diverses façons, notamment par une vue de « toutes les données » ainsi que par thèmes basés sur la population. Les thèmes basés sur la population comportent des données pour une population particulière au sein du SJP ainsi que des renseignements qualitatifs qui servent à mettre en contexte les expériences vécues par cette population. Le thème axé sur la population actuellement offert est celui des peuples autochtones.

En 2020, le Ministère présentera le prochain thème basé sur la population de l'Initiative de l'état du système de justice pénale : les femmes. Ce thème permettra de voir des données statistiques préalablement triées du Cadre, de manière à pouvoir comparer les renseignements sur les hommes et sur les femmes[3]. En outre, les renseignements qualitatifs au sujet des expériences vécues par les femmes dans le système de justice pénale seront également inclus pour permettre de mettre en contexte les données quantitatives.

À l'heure actuelle, tous les indicateurs de rendement pertinents ne sont pas disponibles à l'échelle nationale ou aucune donnée n'est collectée pour eux. Certains indicateurs sont disponibles, mais doivent faire l'objet de consultations et de discussions plus poussées avant d'être intégrés au Cadre. Trente huit indicateurs ou domaines supplémentaires ont été identifiés comme étant importants pour la surveillance du rendement et l'établissement de rapports sur le rendement. Ces indicateurs supplémentaires et ces domaines d'élaboration de données futures indiquent qu'il manque des renseignements de base sur le rendement du système de justice pénale, ce qui limite la capacité de bien comprendre l'état du système de justice pénale. Le Cadre est en cours d'élaboration, et il devrait faire l'objet de modifications au fil de l'évolution de la capacité en mesure du rendement et du SJP ainsi qu'en fonction de la disponibilité d'autres données. Le Ministère continuera de collaborer avec des intervenants pour améliorer davantage le Cadre et pour combler les lacunes constatées dans les données.

Le premier cadre national de surveillance du rendement du Canada jette les bases requises pour comprendre l'état actuel dans lequel se trouve le SJP et présente une feuille de route claire pour créer et collecter des données supplémentaires et éclairer les lois, les politiques, les programmes et les pratiques. Le rapport annuel sur l'état du système de justice pénale et le tableau de bord interactif en ligne peuvent être consultés à l'adresse suivante : www.justice.gc.ca/fra/jp-cj/etat-state/index.html. ■

NOTES

1. Les consultations portaient principalement sur l'établissement des résultats globaux et la détermination des indicateurs appropriés pour chaque secteur de résultats.
2. Une orientation neutre signifie que la nature ciblée du changement d'un indicateur (p. ex., augmentation ou diminution) n'est pas claire ou est difficile à interpréter. Pour certains indicateurs, un changement d'orientation pourrait être interprété à la fois positivement et négativement relativement à d'autres données, ou devrait être interprété avec prudence en raison des limites relatives aux données. Par exemple, un changement dans le nombre de personnes inscrites comme victimes pour recevoir des renseignements sur la personne qui leur a fait du tort pourrait être attribuable à un changement dans d'autres variables, telles que le nombre de victimes/personnes dans le système correctionnel fédéral ou la sensibilisation/ l'intérêt des victimes à s'inscrire pour recevoir des renseignements.
3. Le Cadre a été élaboré en se fondant sur une Analyse comparative entre les sexes (ACS+). Il s'agit d'un processus analytique permettant d'évaluer les répercussions potentielles des politiques, des programmes et des initiatives sur différents groupes de femmes, d'hommes et de personnes non binaires. Selon ce processus, les personnes ont de multiples facteurs d'identité qui se recoupent, tels que le sexe, l'orientation sexuelle, la race, l'ethnicité, la religion, l'âge et la déficience mentale ou physique et peuvent avoir une incidence sur leurs expériences. Outre la présentation des renseignements pour les femmes et pour les hommes de façon distincte au moyen du thème axé sur les femmes, au fur et à mesure que de nouvelles données et de nouveaux résultats de recherche sur les facteurs de recoupement sont connus, comme l'âge, la race, l'ethnicité et la déficience mentale ou physique, les renseignements seront ajoutés pour souligner les expériences de différentes populations au sein du système de justice pénale.

The State of the Criminal Justice System: A performance monitoring framework for Canada's criminal justice system

DEPARTMENT OF JUSTICE CANADA

The Department of Justice Canada (the Department) developed the first national performance monitoring framework for Canada's criminal justice system (CJS). Launched in May 2019, the State of the Criminal Justice System Framework (the Framework) increases our overall ability to monitor, and therefore understand, how well the criminal justice system is performing in relation to nine multifaceted objectives. The information collected is available to the public in different forms, such as the Annual Report or the online interactive Dashboard - both of which are available at www.justice.gc.ca/eng/cj-jp/state-etat/index.html.

The State of the Criminal Justice System Framework (the Framework) was developed by the Department of Justice Canada (the Department) as the first performance monitoring framework for Canada's criminal justice system (CJS). The purpose of the Framework is to increase our overall ability to monitor, and therefore understand, how the criminal justice system is doing in terms of achieving its multifaceted objectives.

The Framework is based on extensive research and feedback from multi-phased consultations with CJS partners, stakeholders, experts, and the Canadian public. The Framework currently includes nine broad expected outcomes for the CJS that are measured by 41 national indicators. For some indicators, the Framework identifies a targeted direction of improvement (e.g., increase, decrease or neutral). The nine expected outcomes of the State of the Criminal Justice System are:

- Canadians are safe and individuals and families feel safe.
- The criminal justice system is fair and accessible.
- Canadians understand the role of and express confidence in the criminal justice system.
- The criminal justice system operates efficiently.
- The criminal justice system promotes and supports diversion, restorative justice, Indigenous justice, and tools for community-based resolution.
- The criminal justice system provides persons in the correctional system with services and supports to rehabilitate them and integrate them back into the community.
- The criminal justice system respects victims' and survivors' rights and addresses their needs.
- The criminal justice system reduces the number of Indigenous people in the system.
- The criminal justice system reduces the number of marginalized and vulnerable people in the system.

An annual State of the Criminal Justice System Report and an online interactive Dashboard were created to present data and information from the Framework. The first iterations of the Annual Report and Dashboard were launched in May 2019. The purpose of these tools is to make a complicated and varied collection of CJS datasets and indicators easier for the public to access and understand. They also provide performance information regarding the CJS in one central location.

More specifically, the Annual Report presents quantitative data on selected indicators from the Framework. Indicators included in the Annual Report are based on noteworthy findings and available data for the specific year.

The online Dashboard presents all the information from the Framework. The Dashboard presents information and data collected for the 41 performance indicators, grouped according to the nine outcomes. The information can be viewed in a number of ways, including an 'all data' view, as well as by population-based themes. Population-based themes allow the user to bring up data for particular populations within the CJS, as well as qualitative information that serves to contextualize the group's experiences within the Canadian CJS. The population-based theme currently available is on Indigenous people.

In 2020, the Department will launch the next population-based theme of the State of the Criminal Justice System Initiative: Women. This pre-filtered view will present statistical data from the Framework so that information on men and women can be compared. In addition, qualitative information about the experiences of women in the criminal justice system will also be included to help contextualize the quantitative data.

Not all relevant performance indicators are currently available at a national level or no data has yet been collected. Of the available indicators, some require further consultation and discussion before being incorporated into the Framework. An additional thirty-eight indicators or areas have been identified as important for monitoring and reporting on performance. These additional indicators or areas for future data development are signs that core information about the performance of the criminal justice system is missing, which limits the ability to fully understand the state of the criminal justice system. The Framework is a work in progress, with modifications expected over time as performance measurement capacity and the CJS changes, and more data becomes available. The Department will continue to work with stakeholders to further refine the Framework and fill the data gaps it has identified.

Canada's first national performance monitoring framework provides the foundation for understanding the current state of the CJS and provides a clear roadmap for further data development and data collection to inform legislation, policies, programs, and practices. The State of the Criminal Justice System Annual Report and online interactive Dashboard are available at: www.justice.gc.ca/eng/cj-jp/state-etat/index.html. ■

NOTES

1. The consultations focused primarily on defining high-level outcomes and identifying appropriate indicators for each outcome area.
2. A neutral direction means that the targeted direction of change in an indicator (e.g., increase or decrease) is not clear or is difficult to interpret. For some indicators, a change in the direction could be interpreted both positively and negatively in relation to other data, or it should be interpreted with caution based on data limitations. For example, a change in the number of individuals registered as a victim to receive information about the person who harmed them could be attributable to a change in other variables, such as the number of victims/individuals in the federal correctional system or victims' awareness of/interest in registering to receive information.
3. The Framework was developed using a Gender-based Analysis Plus (GBA+) lens. This is an analytical process to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives. It recognizes that individuals have multiple identity factors that intersect such as gender, sexual orientation, race, ethnicity, religion, age, and mental or physical disability and can impact their experiences. In addition to presenting information separately for women and men through the Women theme, as new data and research becomes available on intersecting identity factor such as age, race, ethnicity, and mental or physical disability, the information will be added to highlight the experiences of different populations within the criminal justice system.

Among other of Ms. Van Sluytman's publications, refer to "Sawbonna: Victim-Led Restorative Justice". 2020.
Available online at the Office of the Federal Ombudsman for Victims of Crime (www.victimsfirst.gc.ca).

Parmi les plusieurs autres ouvrages de Mme Van Sluytman, consultez "Sawbonna : la Justice réparatrice axée sur les victimes". 2020.
Disponible enligne au Bureau de l'ombudsman fédéral des victimes d'actes criminels (www.victimesdabord.gc.ca).

From Where I Stand, Hope Matters

MARGOT VAN SLUYTMAN
Award-Winning Poet and Restorative-Justice Researcher

In this article/book review, the award-winning poet and victimologist Margot Van Sluytman fathoms Jody Wilson-Raybould's bold new non-fiction, From Where I Stand: Rebuilding Indigenous Nations for a Stronger Canada, in the crucible of a book of poetry, Hope Matters, penned by Lee Maracle and her daughters Columpa Bobb, and Tania Carter. Van Sluytman embraces the inspiration of Wilson-Raybould's non-fiction book and the book of poetry by Maracle, Bobb, and Carter, noting that writing of hope and justice always involves risk. Reading these two books side by side, notes Van Sluytman, is to know that the personal and political are necessary allies: From Where I Stand underscores that being allies means addressing The Indian Act in light of The United Nations Declaration on the Rights of Indigenous Peoples, while Hope Matters shines a light of unclouded wisdom on the aspect of bridge-building and reminds us that "justice calls us to burn brightly together because each of our voices matter".

In reading two books side-by-side, from seemingly unrelated genres, I recognized a stark connection between them: justice's call to be heard, as if anew. I was compelled to write a review twinning these publications. A dance, if you will, wherein sizzling and searing wisdom wends itself both upon and between the lines of each page. The intellect of the heart and the intellect of the head, bound together, expressing the vibrant knowing that poetry and politics, just as the personal and the political, do mix. And mix well.

Jody Wilson-Raybould's bold new non-fiction, *From Where I Stand: Rebuilding Indigenous Nations for a Stronger Canada*, sits easily in the crucible of a book of poetry blending the voices of Lee Maracle and her daughters Columpa Bobb, and Tania Carter:, *Hope Matters*. The scope of each of these books throbs with a clarity that wills readers to move close, close, closer still, to imbibe the salient knowing that transforming justice within a framework of reconciliation means risk. To risk pen to paper. To risk articulating what tries to be hidden, dismissed because shame and fear threaten to banish knowings of historical and generational atrocities. To risk igniting fires. Fires that warm not decimate, not destroy. Lee Maracle writes:

My body has always understood justice
Everyone eats and so we included you
There is no word for exclusion
So your whiteness is no threat
(p.83, *Hope Matters)*.

Wilson-Raybould's words echo Maracle's knowing:

… I hope you will see the integrative nature of the challenge of reconciliation… that we realize that both Indigenous and non-Indigenous governments have a role to play but so, too, do each of us as individuals
(p.13, *From Where I Stand*).

Hope and justice are two themes that are spelled out clearly in both books. As Canada and Indigenous Nations re-form and trans-form relationships, hope and justice are needed. Jody Wilson-Raybould, re-negotiating her steps from one of the top posts in the Federal Liberal Party to Independent, offers answers. In fact, *From Where I Stand*, consists of her talks and speeches made while she was Justice Minister and Attorney General of Canada. Several speeches post that position are included, as well. Post that position, her vantage-point is broader in scope, though

the vision that has always underscored Wilson-Raybould's choice to accept the role of leadership from her community and Canada is not new. Clear articulations of the responsibilities for reconciliation and shared-journeying into the future, stand stark and beckoning.

Wilson-Raybould's book, like, *Hope Matters*, is laced in hope, hope that is not disentangled from the knowing that hope is in-formed, re-formed, and trans-formed by facing truth. Hard truths. Necessary truths. Facing truths and twinning that with action. And action that is not a one-off proposition or knee-jerk response, but rather an on-going process of relationship building. Re-building. Time-taking, risk-informed, courage-infused. Both books address this via the voices of women whose lived-experience invite readers, using inspiring prose and poetry, to both ask and sit with new questions about coming to understand and articulate what reconciliation means: personally and politically.

That allies are a crucial element of reconciliation, the need of being, finding, and creating the places and spaces for this, becomes apparent in reading each of these books. First and foremost, the books themselves are allies, are bridge-builders. Both step into truth. Wilson-Raybould, by addressing the salient point that, "Unfortunately, after confederation, Crown policy became one of assimilation, not partnership" (p.47, *From Where I Stand*), underscores that being allies means addressing The Indian Act in light of The United Nations Declaration on the Rights of Indigenous Peoples. Addressing and acting.

Shining a light of unclouded wisdom on the aspect of bridge-building are Lee Maracle's words:

Our fire seeks relations
with all beings
Justice calls us to burn
brightly together

Justice is a song
sounding our love
for humanity
for life, for freedom
(p.77, *Hope Matters*).

That "justice calls us to burn brightly together", is what is most significant about these books.

Justice is not step-by-step instruction or how-tos. Neither of these books is a how-to manual of dictates and proscriptions. They are a crucial way to understanding what has been, what is, and what can be. Reading these books side-by-side, is to imbibe language. Word. Image. Symbols. Knowledge. And language: oral, signed, written, is was, and will ever be how human beings build relationship and makes resilience a potent, potent ally. Stepping into the vast, challenging, and vitally life-affirming knowing that is reconciliation, is what these two books offer. And offer in a way that compels us to know that each of our voices matter. ■

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RÉSUMÉ

From Where I Stand, Hope Matters

MARGOT VAN SLUYTMAN
Poétesse et chercheur (Justice réparatrice) primée

Dans cet article/critique littéraire, la poétesse et chercheur en justice réparatrice primée, Margot Van Sluytman, sonde le tout nouvel ouvrage non romanesque audacieux de Jody Wilson-Raybould, intitulé *From Where I Stand: Rebuilding Indigenous Nations for a Stronger Canada*, dans le creuset d'un recueil de poèmes, intitulé *Hope Matters*, signé par Lee Maracle et ses filles Columpa Bobb et Tania Carter. Mme Van Sluytman englobe l'inspiration de l'ouvrage non romanesque de Mme Wilson-Raybould et le recueil de poèmes de Mmes Maracle, Bobb et Carter, rappelant qu'écrire sur l'espoir et la justice comporte toujours un risque. Mme Van Sluytman explique que la lecture parallèle de ces deux ouvrages revient à savoir que le personnel et le politique sont des alliés nécessaires. En effet, l'ouvrage *From Where I Stand* met en évidence que le fait d'être des alliés signifie aborder la *Loi sur les Indiens à la lumière* de la Déclaration des Nations unies sur les droits des peuples autochtones, et le recueil *Hope Matters* apporte un jugement clair sur l'aspect de la création de liens et nous rappelle que la justice nous amène à briller vivement ensemble parce que chacune de nos voix est importante.

Bill S-207: An Appropriate Exception to the Jury Secrecy Rule

FRANÇOIS BOILLAT-MADFOUNY
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On December 12th, 2019, Bill S-207, *An Act to Amend the* Criminal Code (*Disclosure of Information by Jurors*), had its first reading in the Senate. Championed by Senator Boisvenu, this bill follows Michael Cooper's Bill C-417 that passed through the House of Commons with all-party unanimous support, but which died officially when the writ dropped to mark the start of the 2019 federal election.

Currently, section 649 Crim. C. makes it an offence for a juror to disclose "any information relating to the proceedings of the jury when it was absent from the courtroom that was not subsequently disclosed in open court"[1]. Bill S-207 would create an exception to the jury secrecy rule by allowing jurors to disclose information relating to jury deliberation process during treatment or counselling received from a health care professional after the completion of the trial[2]. Subsection (3) provides that the professional that provides such services "must be entitled to do so under the laws of a province"[3].

The rationale behind S-207 is compelling. No doubt legal proceedings dealing with horrible crimes and involving explicit and traumatic evidence can induce stress for certain jurors that are exposed to it[4]. Common symptoms can include intrusive thoughts nightmares, trouble sleeping, the development of phobias, anger, loss of appetite, a sense of isolation from loved ones, hypervigilance, depression, anxiety and substance abuse problems[5]. Allowing jurors to disclose some of the content of the deliberation process to a mental health professional is beneficial because being able to "talk about it" is one of the most effective ways to reduce stress levels[6]. By adhering to a strict interpretation of the juror secrecy rule, the law is perpetuating the negative psychological effects that citizens may be subject to when required by a court to fulfill their jury duty.

Consequently, at its outset, Bill S-207 seems positive and deserving of support. A look back at the underlying principles and justifications for jury secrecy is, however, necessary if we are to assess the reasonableness of creating exceptions to this historically unwavering rule.

In 2001, the Canadian Supreme Court thoroughly explored jury secrecy in *R. v. Pan; R. v. Sawyer*[7]. What was mainly at issue was the constitutionality of the common law rule, a principle deeply rooted in Canadian criminal law[8]. It parallelly studied the constitutionality of section 649 Crim. C.

The Court identified three rationales that have historically justified jury secrecy in Canadian criminal law. Its first and foremost benefit is that it ensures frank and candid debate between the jurors during the deliberation process[9]. Additionally, jury secrecy ensures the "finality of the verdict" and its solemnity[10]. Finally, the secrecy

rule ensures the safety of jurors and protects them from reprisals[11]. Essentially, the Court explains that "[t]he secrecy of the deliberation process, both during and after the conclusion of the trial, is a vital and necessary component of the jury system"[12] and that it "serves to maintain public confidence in the criminal justice system"[13].

We don't believe there is any reason why S-207's proposed amendment should not be supported. Given its purpose and the limited settings in which jurors would be allowed to disclose information relating to the jury deliberation process, the risk of affecting any of the three rationales justifying the jury secrecy rule seems fairly low.

However, we believe proposed subsection 649(3) should be amended to provide a carefully crafted definition of the term "health care professional". Such a definition should balance the need to make health services for jurors as accessible as possible with the need to preserve the secrecy of the jury deliberation process. It should evidently include physicians and psychologists who are licensed or accredited to provide counselling, support and therapeutic services under applicable provincial legislation. In addition, we believe that it may be appropriate to include professionals such as therapists, social workers or even religious mentors that can offer necessary support to jurors in a much more accessible way.

Yet, we are aware that a larger definition of "health care professional" increases the risk that the content of jury deliberations be leaked. Indeed, while licensed health care professionals such as physicians and psychologists adhere to codes of conduct that include specific codified obligations to maintain professional secrecy regarding what they are told by their patients[14], other professions don't necessarily adhere to such enforceable obligations. Yet, these individuals can offer necessary and much more accessible support and services to jurors who need it.

Consequently, a large definition of "health care professional" should be privileged, but it must necessarily be coupled with a subsection criminalizing "subsequent disclosure". This means that it should be prohibited for professionals from further disclosing the information obtained during post-verdict counselling session with jurors, except where this subsequent disclosure is made for valid therapeutic reasons, or further disclosure is necessary in order to prevent acts of violence, including suicides. This prohibition should be included in the form of a criminal offence under section 649 Crim. C.[15]. This is essential if we wish to limit any potential risk that information regarding the jury deliberation process be illegitimately disclosed, putting at risk the different rationales justifying the jury secrecy rule in Canada.

In conclusion, we overall agree with Bill S-207 and think that given the risks of post-verdict mental health hazards on jurors, the proposed exception to the juror secrecy rule is necessary and appropriate. However, we believe this exception should be wide enough to ensure accessibility of services to jurors who need it, without dangerously risking leakage of the jury deliberation process. Finally, we would strongly support any furthered interest in ensuring the government secures resources for jurors to be indemnified from the costs of consulting a health care professional post-verdict. It seems quite unfair for a juror to have to suffer the costs of treatment when health issues were developed after being *required* by the Court to fulfill a civic duty that can be not only time consuming, but traumatic. Even though the provinces are responsible for the costs for jurors, the federal government should enquire about participating financially. ■

NOTES

1. Crim. C., s. 649. The only current exceptions to the jury secrecy rule are for the purposes of "(a) an investigation of an alleged offense under subsection 139(2) in relation to a juror, or (b) giving evidence in criminal proceedings in relation to such an offence".
2. This is how the exception would be formulated (Bill S-207, s. 1):
   "649 (2) Subsection (1) does not apply in respect of the disclosure of information for the purposes of […] (c) any medical or psychiatric treatment or any therapy or counselling that a person referred to in subsection (1) receives from a health care professional after the completion of the trial in relation to health issues arising out of or related to the person's service at the trial as a juror or as a person who provided support services to a juror."
3. Crim. C., s. 649 (3) [Bill S-207, s. 1].
4. House of Commons (2018, May). Improving Support for Jurors in Canada: Report of the Standing Committee on Justice and Human Rights, 42nd Parliament, 1st session, p. 9. https://bit.ly/2xUgepe.
5. *Id*., p. 24.
6. *Id*., p. 30.
7. *R. v. Pan, R. v. Sawyer*, 2001 SCC 42. The modern secrecy rule is defined in the following terms:
   "[77] […] [S]tatements made, opinions expressed, arguments advanced and votes cast by members of a jury in the course of their deliberations are inadmissible in any legal proceedings. In particular, jurors may not testify about the effect of anything on their or other jurors' minds, emotions or ultimate decision. On the other hand, the common law rule does not render inadmissible evidence of facts, statements or events extrinsic to the deliberation process, whether originating from a juror or from a third party, that may have tainted the verdict. »
8. *Id*., par. 47.
9. *Id*., par. 50:
   "The first reason supporting the need for secrecy is that confidentiality promotes candour and the kind of full and frank debate that is essential

to this type of collegial decision making. While searching for unanimity, jurors should be free to explore out loud all avenues of reasoning without fear of exposure to public ridicule, contempt or hatred. This rationale is of vital importance to the potential acquittal of an unpopular accused, or one charged with a particularly repulsive crime. In my view, this rationale is sound, and does not require empirical confirmation."

10. *Id.*, par. 51:
"The Court of Appeal also placed considerable weight on the second rationale for the secrecy rule: the need to ensure finality of the verdict. Describing the verdict as the product of a dynamic process, the court emphasized the need to protect the solemnity of the verdict, as the product of the unanimous consensus which, when formally announced, carries the finality and authority of a legal pronouncement. That rationale is more abstract, and inevitably invites the question of why the finality of the verdict should prevail over its integrity in cases where that integrity is seriously put in issue. In a legal environment such as ours, which provides for generous review of judicial decisions on appeal, and which does not perceive the voicing of dissenting opinions on appeal as a threat to the authority of the law, I do not consider that finality, standing alone, is a convincing rationale for requiring secrecy."

11. *Id.*, par. 52:
"The respondent, as well as the interveners supporting its position and, in particular, the Attorney General of Quebec, place great emphasis on the third main rationale for the jury secrecy rule – the need to protect jurors from harassment, censure and reprisals. Our system of jury selection is sensitive to the privacy interests of prospective jurors (see R. v. Williams, 1998 CanLII 782 (SCC), [1998] 1 S.C.R. 1128), and the proper functioning of the jury system, a constitutionally protected right in serious criminal charges, depends upon the willingness of jurors to discharge their functions honestly and honourably. This in turn is dependent, at the very minimum, on a system that ensures the safety of jurors, their sense of security, as well as their privacy."

12. *Id.*, par. 82.

13. *Id.*, par. 89. See also R. v. Lewis, 2017 ONCA 216, par. 43.

14. For instance, in the province of Québec, physicians and psychologists must follow patient confidentiality rules respectively found in the *Code of Ethics of Physicians*, CQLR c M-9, r 17 and Code of Ethics of Psychologists, CQLR c C-26, r 212. They may, however, communicate information protected by professional secrecy in order to prevents acts of violence, including suicides (*Code of Ethics of Physicians*, par. 21; *Code of ethics of psychologists*, par. 18). See also the *Code of Ethics of the Canadian Medical Association*, s. 22.

15. This is what Australia's State of Victoria seems to have done. Akin to what is suggested in Bill S-207, its *Juris Act* (2000, Act No. 53/2000. https://bit.ly/39I9tDX) provides an exception to the common law jury secrecy rule:
"78. […] (5) Nothing in sub-section (1)(b) or (2) prevents a person who has been a juror from disclosing any statements made, opinions expressed, arguments advanced or votes cast in the course of the deliberations of that jury to a registered medical practitioner or a registered psychologist in the course of treatment in relation to issues arising out of the person's service as a juror."
It, however, includes a subsection that makes it illegal for the medical practitioner to disclose the information that was shared with him through sub-section 5:
"(6) A registered medical practitioner or registered psychologist must not disclose information referred to in sub-section (5) to any other person".

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Projet de loi S-207 : Une exception raisonnable au secret des délibérations du jury

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Le 12 décembre 2019, le Sénat a procédé à la première lecture du Projet de loi S-207 (*Loi modifiant le* Code criminel (*divulgation de renseignements par des jurés*). C'est le Sénateur Boisvenu qui a présenté S-207, reprenant le projet de loi C-417 de Michael Cooper qui avait reçu un soutien unanime à la Chambre des communes, mais qui est toutefois mort au feuilleton alors que les élections fédérales se sont enclenchées.

Présentement, l'article 649 du *Code criminel* criminalise le fait pour un juré de « divulguer tout renseignement relatif aux délibérations du jury, alors que celui-ci ne se trouvait pas dans la salle d'audience, qui n'a pas été par la suite divulgué en plein tribunal[1] » . Le projet de loi S-207 créerait une exception au secret des délibérations du jury en permettant aux jurés de dévoiler de l'information s'y rapportant lors de traitements, consultations ou thérapies fournis par un professionnel de la santé après que les procédures judiciaires soient terminées[2]. Le professionnel fournissant lesdits services « devra être autorisé par le droit d'une province à le faire »[3].

La logique sous-tendant le projet de loi S-207 est convaincante. Il n'est pas étonnant que certaines procédures judiciaires pénales impliquent de la preuve explicite et parfois traumatisante qui peut engendrer un très grand stress à ceux qui doivent la consulter[4]. Les symptômes peuvent inclure « des pensées intrusives, des cauchemars, des troubles du sommeil, le développement de phobies, la colère, la perte d'appétit, le sentiment d'isolement par rapport à ses proches, l'hypervigilance, la dépression, l'anxiété et des problèmes de dépendance »[5]. Permettre aux jurés de divulguer à un professionnel de la santé certains des renseignements du processus de délibération serait bénéfique puisque le simple fait d'en parler serait un moyen efficace pour diminuer les conséquences psychologiques en découlant[6]. Toutefois, en privilégiant une interprétation limitée et stricte de la règle du secret des délibérations du jury, le droit perpétue les effets néfastes que subissent certaines personnes de qui l'on exige de remplir leur devoir de citoyen d'agir comme juré.

Conséquemment, à sa face même, le projet de loi S-207 nous paraît positif et mérite d'être soutenu. Cela étant, afin de déterminer si une exception à une règle historiquement inébranlable est opportune, il importe d'étudier les différents principes justifiant la règle selon laquelle les délibérations du jury doivent demeurer secrètes.

La Cour suprême a longuement étudié cette règle dans l'arrêt *R. c. Pan*, *R. c. Sawyer*[7]. Dans cette affaire, elle devait se prononcer tant sur la constitutionnalité de la règle de *common law* selon laquelle les délibérations du jury doivent demeurer secrètes, que celle de la règle codifiée à l'article 649 C.cr[8]. C'est alors qu'elle identifie les trois raisonnements justifiant leur protection.

Tout d'abord, elle estime que « la confidentialité encourage la franchise et le genre de débats ouverts et exhaustifs essentiels à ce type de processus décisionnel collégial »[9]. Deuxièmement, le secret des délibérations permet « d'assurer le caractère définitif du verdict »[10]. Finalement, la règle permet « de protéger les jurés contre le harcèlement, la censure et les représailles »[11]. La Cour conclut essentiellement que « le secret du processus de délibération – tant pendant le procès qu'après celui-ci – constitue un aspect vital et nécessaire de l'institution du jury »[12] et qu'il contribue au « maintien de la confiance du public dans l'administration de la justice »[13].

Bien humblement, nous ne voyons pas en quoi la proposition du projet de loi S-207 ne devrait pas être entérinée. Considérant les contextes limités dans lesquels des renseignements découlant du processus de délibération du jury seraient divulgués, le risque d'atteinte aux principes justifiant le secret des délibérations nous semble relativement faible.

Cela étant, nous suggérons que le projet de loi établisse une définition claire et soigneusement rédigée de ce qui constitue un « professionnel de la santé ». Une telle définition devra s'assurer que les services d'aides aux jurés soient effectivement accessibles, tout en protégeant autant que possible le secret des délibérations du jury. Évidemment, elle devra inclure tous les médecins et psychologues qui sont autorisés par la province à offrir de tels services, tel que le prévoit déjà l'article 649(3). Toutefois, il serait potentiellement approprié d'inclure d'autres types de professionnels, tels que les travailleurs sociaux ou même les guides spirituels qui pourraient, pour certains, offrir un soutien nécessaire aux jurés.

Toutefois, un tel élargissement de la définition du « professionnel de la santé » augmente nécessairement - voire drastiquement - le risque que le contenu du processus de délibération du jury soit indûment divulgué. En effet, alors que les médecins et psychologues agissent dans le cadre d'un code de déontologie qui les oblige à respecter certaines règles de confidentialité relativement aux échanges qu'ils entretiennent avec leurs patients[14], d'autres professions ne doivent pas nécessairement adhérer à de telles obligations. Toutefois, leurs services peuvent être essentiels pour assurer une accessibilité aux jurés qui ont des besoins spécifiques.

Conséquemment, bien qu'une définition large du professionnel de la santé pourrait être légitimement privilégiée, elle devra nécessairement être conjuguée à la criminalisation de la « divulgation secondaire ». Cela implique qu'il devrait être interdit pour un professionnel de la santé de divulguer, sauf pour raison médicale valide ou pour éviter un acte de violence, quelconque information obtenue relativement au processus de délibération d'un jury lors d'une consultation médicale avec un jury, sous peine de sanction pénale. Cette interdiction devrait prendre la forme d'une infraction prévue à l'article 649 C.cr[15]. Ceci nous semble essentiel si l'on souhaite limiter les risques de divulgation indue de renseignements protégés par le secret des délibérations, tout en s'assurant que les jurés puissent accéder aux services qu'ils estiment nécessaires pour leur santé.

Bref, somme toute, nous appuyons le projet de loi S-207. Considérant les risques d'atteintes à la santé psychologique des jurés, l'exception proposée au secret du processus de délibération du jury nous paraît raisonnable. Toutefois, celle-ci devra être assez large pour permettre que les jurés aient véritablement accès aux services dont ils ont besoin, sans mettre à risque les principes sous-tendant la règle du secret des délibérations. Par ailleurs, il nous semble important que les jurés qui consultent des professionnels de la santé suite aux procédures judiciaires puissent être dédommagés des coûts engendrés. Il serait injuste qu'un individu, de qui l'on exige l'accomplissement de son devoir de citoyen, ne puisse être épaulé par l'État lorsqu'il en subit des conséquences sur sa santé. Bien que les provinces soient responsables des coûts associés aux jurés, le gouvernement fédéral devrait étudier la possibilité de participer à ce financement. ■

NOTES

1. C.cr., art. 649. Les seules exceptions à la règle sont lorsque de tels renseignements sont dévoilés aux fins « a) soit d'une enquête portant une infraction visée au paragraphe 139(2) dont la perpétration est alléguée relativement à un juré, b) soit de témoigner dans des procédures engagées en matière pénale relativement à une telle infraction ».
2. Voici le texte du paragraphe 2 de l'article 649 C.cr. :
   « (2) Le paragraphe (1) ne s'applique pas à la divulgation de renseignements aux fins : […] c) soit, suivant la fin d'un procès, d'un traitement médical ou psychiatrique, d'une thérapie ou de services de consultation, fournis par un professionnel de la santé à toute personne visée au paragraphe (1) relativement à des problèmes de santé consécutifs ou liés aux fonctions de cette personne en tant que membre d'un jury ou personne ayant fourni de l'aide à un membre d'un jury lors d'un procès. »

3. C.cr., art. 649 (3) [Projet de loi S-207, art. 1].

4. Chambre des Communes (2018, mai). Mieux soutenir les jurés au Canada : Rapport du Comité permanent de la justice et des droits de la personne, 42e législature, 1ère session, p. 9. https://bit.ly/2whdMIJ.

5. *Id*., p. 24.

6. *Id*., p. 30.

7. La règle « moderne » du secret des délibérations se décline comme suit (*R. c. Pan R. v. Sawyer*, 2001 CSC 42, par. 77):
   > « Les déclarations, opinions, arguments et votes des membres d'un jury dans le cours de leurs délibérations sont inadmissibles dans toute instance judiciaire. Plus particulièrement, un juré ne peut témoigner sur l'effet qu'a eu quoi que ce soit sur son esprit, ses sentiments ou sa décision finale, ou sur l'esprit, les sentiments ou la décision finale des autres jurés. Par ailleurs, la règle de *common law* ne rend pas inadmissible la preuve de faits, déclarations ou événements extérieurs au processus de délibération et susceptibles d'avoir vicié le verdict, que cette preuve émane d'un juré ou d'un tiers. »

8. *Id*., par. 47.

9. *Id*., par. 50 :
   > « La première raison est le fait que la confidentialité encourage la franchise et le genre de débats ouverts et exhaustifs essentiels à ce type de processus décisionnel collégial. Tout en visant à l'unanimité, les jurés doivent être libres d'explorer toutes les façons de voir les choses sans avoir à craindre de s'exposer au ridicule, au mépris ou à la haine. Cette justification est d'une importance vitale pour l'acquittement potentiel d'un accusé impopulaire ou d'une personne inculpée d'un crime particulièrement répugnant. À mon avis, cette justification est fondée et ne nécessite pas de confirmation empirique.

10. *Id*., par. 51:
    > « La Cour d'appel a aussi accordé un poids considérable à la deuxième justification de la règle sur le secret des délibérations et jury : la nécessité d'assurer le caractère définitif du verdict. En décrivant le verdict comme le produit d'un processus dynamique, la cour a souligné la nécessité de protéger la solennité du verdict en tant que produit d'un accord unanime qui, lorsqu'il est officiellement annoncé, possède le caractère définitif et l'autorité d'une décision judiciaire. Cette justification est plus abstraite et appelle inévitablement la question de savoir pourquoi le caractère définitif du verdict devrait prévaloir sur son intégrité dans les cas où celle-ci est sérieusement remise en question. Dans un environnement juridique comme le nôtre, qui autorise généreusement le contrôle des décisions judiciaires en appel et qui ne perçoit pas l'expression d'opinions dissidentes en appel comme une menace à l'autorité du droit, je ne considère pas que le caractère définitif du verdict constitue à lui seul une justification suffisamment convaincante pour exiger le maintien du secret. »

11. *Id*., par. 52 :
    > « L'intimée, de même que les intervenants qui appuient sa position et tout particulièrement le procureur général du Québec, insistent beaucoup sur la troisième justification principale de la règle sur le secret des délibérations du jury – la nécessité de protéger les jurés contre le harcèlement, la censure et les représailles. Notre système de sélection du jury est sensible au droit à la vie privée des jurés potentiels (voir *R. c. Williams*, 1998 CanLII 782 (CSC), [1998] 1 R.C.S. 1128), et le bon fonctionnement de l'institution du jury, droit garanti par la Constitution aux personnes inculpées de crimes graves, dépend de la volonté des jurés de s'acquitter de leurs fonctions de façon honnête et honorable. Pour cela, il faut à tout le moins un système qui assure concrètement la sécurité des jurés, leur sentiment d'être protégés ainsi que le respect de leur vie privée. »

12. *Id*., par. 83.

13. *Id*., par. 89.

14. Ainsi, au Québec, les médecins et psychologiques adhèrent respectivement au *Code de déontologie des médecins*, RLRQ c M-9, r 17 et au *Code de déontologie des psychologues*, RLRQ c C-26, r 212. Notons qu'ils peuvent toutefois communiquer certaines informations protégées par les règles de confidentialité pour prévenir des actes de violence, incluant le suicide (*Code de déontologie des médecins*, par. 21; *Code de déontologie des psychologues,* par. 18). Voir aussi le *Code d'éthique et de professionnalisme de l'Association médicale canadienne*, s. 22.

15. C'est d'ailleurs ce qui a été fait en Australie. Le *Juris Act* de l'État de Victoria prévoit une exception au secret du processus de délibération (*Juries Act*. 2000, Act No. 53/2000. https://bit.ly/39I9tDX):
    > « 78. […] (5) Nothing in sub-section (1)(b) or (2) prevents a person who has been a juror from disclosing any statements made, opinions expressed, arguments advanced or votes cast in the course of the deliberations of that jury to a registered medical practitioner or a registered psychologist in the course of treatment in relation to issues arising out of the person's service as a juror. »

    Toutefois, il est explicitement interdit pour le professionnel de la santé de divulguer l'information reçue:
    > « (6) A registered medical practitioner or registered psychologist must not disclose information referred to in sub-section (5) to any other person. »

Segregation in Canada and Other Western Democracies

MARK ADDO

This article reports on the long-standing history of the use of segregation in Canada and other Western democracies despite increasing evidence of adverse impacts on mental health. Exploring the various segregation practices in Canada, the United States, the United Kingdom, New Zealand, Australia, Germany and France, author Mark Addo helps identify whether they meet the international standard for segregation in prison operations as given by the United Nation's Nelson Mandela Rules. While all of these countries except the United States and Australia have relevant legal frameworks, Addo emphasizes that prison administrations must nonetheless ensure careful oversight of prison officers to ensure proper implementation of the rules and laws and reduce abuses of solitary confinement in their penitentiaries.

INTRODUCTION

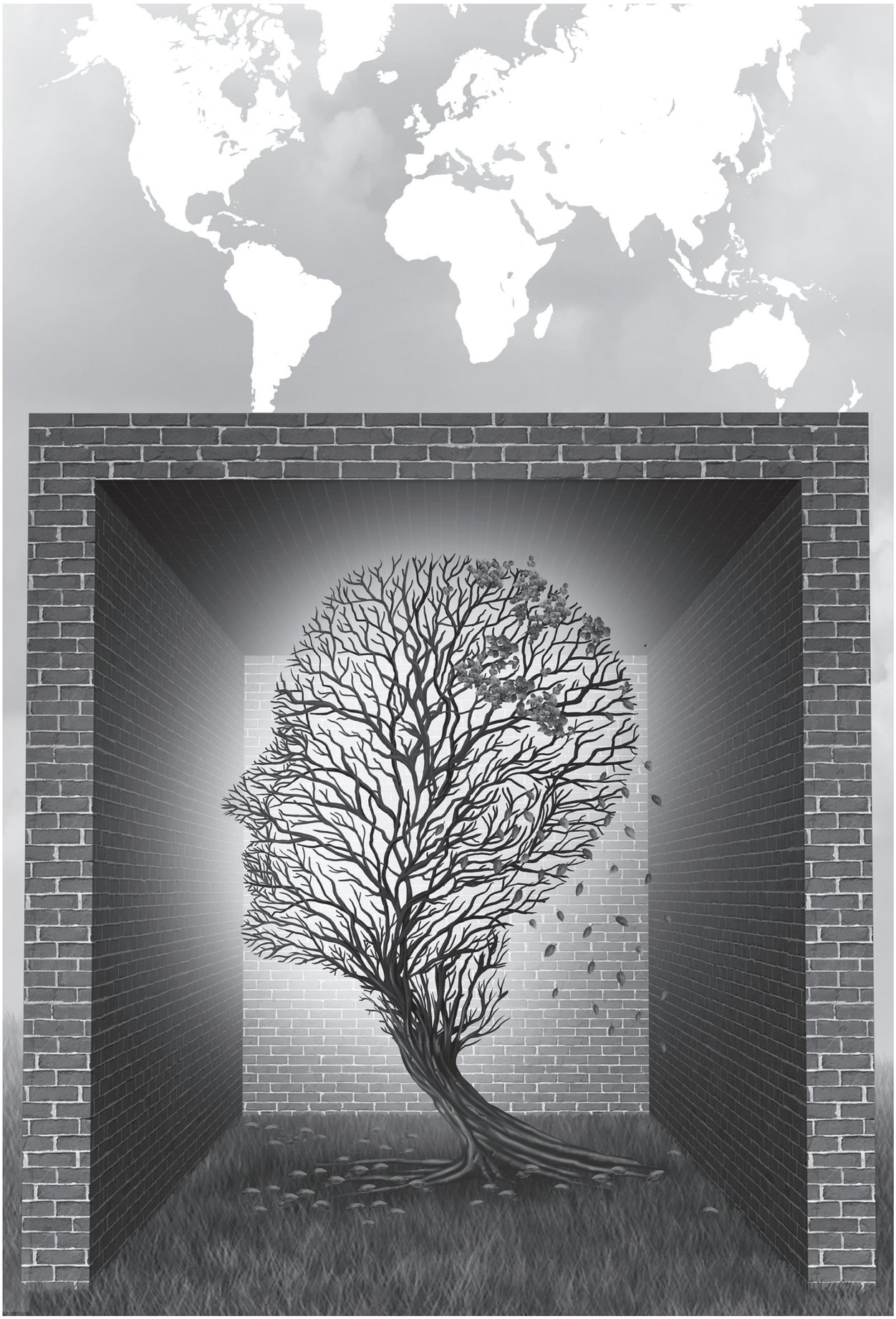
Several jurisdictions around the world use solitary confinement because of its long-standing history in prison administration. However, solitary confinement has adverse health and human rights effects on prisoners. The practice has led to numerous deaths and increased incidence of mental illness around the world. This article explores the international standard for solitary confinement and applies it to the various practice of segregation in Canada, the United States, the United Kingdom, New Zealand, Australia, Germany and France. The comparison also helps to identify among the selected countries whether they meet the international standard for segregation in prison operations.

INTERNATIONAL STANDARD FOR SOLITARY CONFINEMENT

The United Nations addressed solitary confinement in the UN Basic Principles for the Treatment of Prisoners (1990). In 2015, the principles were revised to the UN Standard Minimum Rules for the Treatment of Prisoners and adopted as the Nelson Mandela Rules. The Nelson Mandela Rules are not legally binding, but they represent the current standard for human rights law and prison operation. Rule 43(1) states that "In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman, or degrading treatment or punishment". Rule 45 prohibits the use of solitary confinement except as an exceptional measure of last resort that shall be subjected to independent review. Rule 45 also prohibits placing prisoners with mental or physical disabilities in solitary confinement because it will worsen their condition. These rules apply wherever solitary confinement is used in the world.

ADMINISTRATIVE SEGREGATION IN CANADA

"Solitary confinement" in Canada existed in the form of administrative and disciplinary segregation. Both types of segregation entailed locking an inmate in a cell for more than 22 hours a day. Administrative segregation was used to separate prisoners that were either at risk or posed a threat to the safety of prisoners or staff in penitentiaries. Disciplinary segregation was used for punitive purposes and was highly regulated by law and policy. As a result of the heavy regulation of disciplinary segregation, most Canadian correctional officers preferred to rely heavily on administrative segregation to isolate prisoners—creating abuses of its usage.



AMENDMENTS TO CANADA'S *CORRECTIONS AND CONDITIONAL RELEASE ACT* – BILL C-83

The Canadian Parliament enacted Bill C-83, an *Act to amend the Corrections and Conditional Release Act and another Act* in 2019. The Bill eliminated the use of administrative segregation and disciplinary segregation and authorized the commissioner to designate a penitentiary or an area in prison as a structured intervention unit ("SIUs") for the confinement of inmates who cannot be maintained in the mainstream inmate population for security or other reasons. SIUs offer inmates two hours of "meaningful human contact" outside their cell as well as two hours for recreational activities. Most importantly, a transfer to an SIU must be the last resort; there must be no other alternative course of action available.

Segregation was replaced because of its damaging impact on the mental health of inmates. In Canada, the suicide deaths of Ashley Smith, Christopher Roy, and Terry Baker all exemplify the severe effects of segregation on inmates. Ashley Smith was a 19-year-old female inmate with a history of mental illness. Smith was placed on a suicide watch. However, she was confined to solitary confinement, and she died by self-inflicted strangulation in her cell on October 19, 2007, at the Grand Valley Institution ("GVI") in Kitchener, Ontario. Smith had spent over 11 months in administrative segregation by the time of her death. Christopher Roy committed suicide by hanging himself after spending 60 days in isolation at the Matsqui Prison in Abbotsford, British Columbia, in 2015. Terry Baker was found unresponsive in a segregation cell in 2016 at the GVI in Kitchener. The deaths of the three inmates drove the effects of segregation home to Canadians and led to an outcry for the government to end segregation for Canadian prisoners.

THE USE OF SEGREGATION IN OTHER WESTERN DEMOCRACIES

The United States Super Max Prison

The United States has 50 state jurisdictions and each state is responsible for their prison operations. As a result, there is no central US legislative framework for solitary confinement. Solitary confinement is used in long-term solitary, supermax prisons, or wings known as special housing units (SHUs). Prison unions and administrators justify the use of solitary confinement as an effective way to control prison violence and disrupt gang hierarchies. There are approximately 80,000 US prisoners in long-term solitary, 25,000 of whom are in supermax prisons and the remainder in SHUs. The practice of solitary confinement does not have any independent oversight, and prison officials operate under flexible standards. Thus, inmates are frequently placed in solitary for minor disciplinary offences inside penitentiaries. These factors have created the overuse of solitary confinement in that country.

Segregation in the United Kingdom: England and Wales

In England and Wales, solitary confinement areas are known as segregation units. Prison administrators must follow regulations when placing inmates in segregation. Prisoners are removed from the main prison population and housed in a segregation unit or a close supervision centre (CSC) for their own protection, or for temporary accommodation of a CSC prisoner awaiting an adjudication hearing or found guilty of an offence against prison discipline. Prisoners may be segregated for a maximum of 21 days. The use of segregation for prisoners under the age of eighteen is forbidden. Despite the regulations, Sharon Shalev emphasizes in her study of segregation units and CSCs in England and Wales that more needs to be done to uphold the standards set forth to ensure that inmates be treated with dignity and decency in compliance with international standards.

Segregation in New Zealand

New Zealand has a legislative framework governing solitary confinement, to which it refers as seclusion. The *Corrections Act* 2004 establishes New Zealand's corrections system. The *Corrections Act* defines segregation as an event whereby a prisoner's association with other prisoners may be restricted or denied. The *Corrections Act* authorizes the use of segregation of prisoners for the purpose of security, good order or safety under protective custody, or medical oversight. A segregated prisoner must be given the reason for their segregation in writing, and the chief executive of the Department of Corrections must be informed promptly. The chief executive or a visiting judge may revoke at

any time a decision to segregate an inmate under section 58(3)(b) of the *Corrections Act*. Despite the framework, New Zealand heavily relies on the use of seclusion in their prison facilities. As a result, minorities are frequently secluded, along with women, for whom the seclusion is likely to be for longer periods.

Segregation in Australia

Australia does not have a legal framework for the regulation of solitary confinement, which is referred to as segregated custody. In Australia, the legislative powers vested in prison officials are broad. The senior prison administrator of state prisons has full discretion and decision-making powers regarding the application of solitary confinement. Also, regulations that govern solitary confinement are not uniform. Each state applies its standards under its jurisdiction, and therefore, segregation orders are not subject to scrutiny or judicial review. Such an environment has led to the abuse of solitary confinement in correctional facilities. Australian prisoners have few legal rights and protection against segregated custody. For example, children are placed in solitary confinement in Australia at the Northern Territory Don Dale youth detention centre, despite International law prohibition of placing children in solitary confinement. In some Australian prisons, inmates with disabilities get placed in segregated custody, which also contravenes international standards. The Australian government needs to improve prison standards for inmates and prevent the abuse of solitary confinement in its correctional facilities.

Segregation in France

France prisons have a legislative framework for the use of solitary confinement. The legislation safeguards prisoners and prevents them from being arbitrarily subjected to solitary confinement. The law is applied uniformly throughout the country. The rules and regulations are in Articles R.57-7-40, R.57-7-45 and R.57-7-62 of the *Criminal Procedure Code* . There are two types of solitary confinement in France: preventive and sanctions.

First, solitary confinement is preventive when it relates to the safety or protection of the detainee. Solitary confinement for such purpose is commonly referred to as isolation. The prison authorities must factor in the inmate's health, personality, vulnerability and dangerous nature for placement under solitary confinement. Correctional officers and prison authorities may order the isolation, or the prisoner may request to be placed in isolation. The prison administration has the power to end the confinement at any time. In principle, an inmate placed in isolation should not be there for more than two years. However, in practice, some inmates remain in preventative isolation continually from over six to twelve years. A doctor is also required to check on prisoners under solitary confinement twice per week.

Second, solitary confinement is used as a sanction where the form of confinement takes place in an inmate's cell or a disciplinary cell. Prisoners are subjected to this form of confinement when they break the rules of the correctional facility. The duration of stay varies based on the type of offence and the seriousness of the behaviour, but it cannot exceed 20 days. Sanction confinement is used for punitive purposes.

Segregation in Germany

The German prison system focuses on the rehabilitation of prisoners. Prisoners are treated with human dignity and are not maltreated. Cells have flat-screen televisions, video games, private enclosed bathrooms, wall lockers and beds. Prisoners even have keys to their cells and can wear civilian clothing. Solitary confinement is rarely used in German prisons and, if used, is only done for a short period. The *Federal Prison Act and Model State Prison Act* allows the use of solitary confinement if it's necessary to avert threats of violence, jailbreak or suicidal tendencies. Solitary confinement can also be ordered for disciplinary purposes. For exceptional cases that require the use of solitary confinement, the prison administration is required to ask the head of the Justice Department for approval. If an inmate is subject to solitary confinement, their stay will not exceed three months. The average stay in confinement is three to five days. In the rare case that solitary confinement is used, a prison director is responsible for the order and a prison doctor must be consulted in advance. The necessity of the order is assessed regularly, and the prisoner placed in solitary confinement must be observed with special attention. If an inmate spends more than three days in confinement, it must be reported to the supervisory authority.

The supervisory authority must approve more than thirty days of confinement per year for an inmate. These regulations ensure German correctional facilities rarely depend on the use of solitary confinement. The regulation and legislative framework protect inmates from the abuses of solitary confinement.

CONCLUSION

The Nelson Mandela Rules, while not legally enforceable, likely apply to all the jurisdictions considered herein by setting international standards that protect prisoner human rights and prevent prisoners from being tortured under solitary confinement. Canada, the United Kingdom, New Zealand, France, and Germany have legal frameworks that govern the use of solitary confinement. The United States and Australia lack such legal frameworks and require more effort to meet international standards. Germany rarely applies solitary confinement. The legal frameworks in Canada, the United Kingdom, New Zealand and France each adhere to the Nelson Mandela Rules and safeguard the abuse of solitary confinement. However, these countries' prison administrations require careful oversight of prison officers to implement the rules and laws, in order to reduce the abuse of solitary confinement in their penitentiaries. ■

RÉSUMÉ

Segregation in Canada and Other Western Democracies

MARK ADDO

Cet article pertinent rend compte de la longue histoire de l'utilisation de l'isolement préventif au Canada et dans d'autres démocraties occidentales malgré une augmentation des preuves des répercussions négatives sur la santé mentale. L'auteur explore les différentes pratiques d'isolement préventif au Canada, aux États Unis, au Royaume-Uni, en Nouvelle Zélande, en Australie, en Allemagne et en France, et il détermine si ces pratiques respectent les normes relatives à l'isolement cellulaire dans les activités pénitentiaires énoncées par les Règles Nelson Mandela des Nations Unies. Tous ces pays, à l'exception des États Unis et de l'Australie, disposent de cadres juridiques appropriés, mais M. Addo rappelle que les administrations pénitentiaires doivent néanmoins assurer une surveillance vigilante des agents pénitentiaires afin de garantir la mise en œuvre appropriée des règles et des lois et de réduire l'usage abusif de l'isolement cellulaire dans leurs pénitenciers.

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Revue systématique sur la trajectoire de placement des jeunes fugueurs : La fugue comme vecteur d'instabilité?

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Revue systématique sur la trajectoire de placement des jeunes fugueurs en milieu substitut : les enjeux de l'instabilité
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Présentation faite par Ruth Lamercie Larrieux d'une affiche, co-créée par elle et Ariane Daviault, Sophie Couture et Sonia Hélie, au Congrès 2019 tenu conjointement par la Société de criminologie du Québec et l'Association canadienne de justice pénale (CCJA-ACJP). PHOTO CREDIT : CCJA

Considérant les risques de victimisation et de délinquance qui y sont associés, la fugue représente un problème social considérable. Encore plus préoccupant, on a observé une augmentation de 28 % du taux de fugue en milieu substitut québécois au cours des années 2012-2016. Ces fugues peuvent entraîner diverses conséquences dont une instabilité dans la trajectoire de placement des jeunes suivis. La trajectoire de placement constitue un enjeu important dans le développement des jeunes placés sous la protection de la jeunesse.

Cette revue de littérature porte sur les caractéristiques de la trajectoire de placement associées à la fugue du milieu substitut. Au total, 16 articles, couvrant la période 2000 à 2018, ont été sélectionnés. Malgré des mesures différentes, les résultats soulignent que la fugue est effectivement associée à la trajectoire de placement. Cependant, la plupart des articles sont des études transversales (12 sur 16) ne permettant pas d'établir des conclusions causales. Également, peu d'études traitent de la fugue en institution (3 sur 16) bien que les jeunes placés en institution aient plus de chance de fuguer que ceux de la communauté. En outre, la fugue est souvent mesurée de façon dichotomique alors que les typologies, qui permettraient de considérer la complexité et l'hétérogénéité des jeunes fugueurs, ne sont pas mises en relation avec les variables de trajectoire de placement. Il importe de poursuivre les recherches pour vérifier s'il y a un lien entre les différents profils de jeunes fugueurs en milieu institutionnel et différentes mesures de trajectoire de placement. ■

Considering the risks of victimization and delinquency associated with it, running away from home represents a significant social problem. Even more worrisome, a 28% increase in the rate of runaways from Quebec's alternative care system has been observed over the years 2012-2016. These runaways can lead to various consequences, including instability in the placement trajectory of the young people being monitored. The placement trajectory is an important issue in the development of youth in youth protection.

This literature review examines the characteristics of the placement trajectory associated with running away from a surrogate environment. A total of 16 articles, covering the period 2000 to 2018, were selected. Notwithstanding the various measures, the results highlight that the running away is indeed linked to the placement trajectory. However, most of the articles are cross-sectional studies (12 of 16) and do not allow causal conclusions to be drawn. As well, few studies address institutional runaways (3 of 16) although youth in institutions are more likely to run away than those in the community. In addition, runaway is often measured in a dichotomous manner, while typologies, which would allow for the complexity and heterogeneity of runaway youth to be considered, do not take placement-trajectory variables into account. Further research is needed to determine if there is a relationship between different profiles of institutionalized runaways and different placement trajectories. ■

The Impact of COVID-19 on Criminal Court Systems Around the World

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COVID-19 presents a unique challenge to the traditional face-to-face methods of service delivery within criminal court systems. Courts around the world have had to partially suspend their activities and begin handling court matters based on assessments of urgency, raising the concern of trial delays.

COVID-19 IMPACTS CRIMINAL COURT SYSTEMS GLOBALLY

The Coronavirus (COVID-19) is rapidly changing the world's operations day by day. Due to the preventative measures set in place by the World Health Organization (2020) to prevent the spread of the virus, even essential services have had to adapt to a 'new normal'. With courtrooms being shut down, technology has offered the means to handle urgent matters, allowing the courts to carry out their responsibilities amidst concerns of trial delays. COVID-19 thus presents a unique challenge to the traditional face-to-face methods of criminal court systems.

While criminal court procedures differ globally, similar measures are being used to address criminal court needs during COVID-19. This article will also briefly look at alternative delivery methods that Australia, Canada, the United States (US), and the United Kingdom (UK) turned to during the beginning months of the global pandemic to offset the impact of COVID-19 on criminal court systems.

Criminal Courts and the Technological Looking Glass

The social-isolation restrictions have shut down face-to-face operations and the use of technology has increased for criminal courts. As Pinkus (2020) observes, except for trials, "everything the courts undertake can be done remotely." Some countries struggle with technological transitioning; however, operations in Australia, Canada, the US, and the UK illustrate how advanced technology can afford a smooth transition through online services (Sourdin & Zeleznikow, 2020) that constitute some of the alternative delivery methods being put in motion in the courts of several countries.

CANADIAN AND US APPROACHES TO E-HEARINGS

Since the start of the pandemic, the use of electronic hearings was introduced into Canadian and US criminal courts. Canada is hoping to implement technology-based delivery methods post-pandemic, but the US wants to return quickly to business as usual. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) created by the US mandates that alternative methods be terminated 30 days after the pandemic ends, or when the courts are deemed no longer affected by the pandemic (United States Courts, 2020).

E-hearings are not unfamiliar in Australia's court system; however, this is the first time they have had to operationalize them for criminal matters. Due to the swiftness of the transition, they may "continue operating in this manner post-pandemic" (Hill, 2020).

The UK has implemented e-hearings much like Canada, the US, and Australia; however, the UK's hearings and verdicts are being live-streamed online every Thursday until the pandemic ends (Rettman, 2020). The UK is one of only several countries publishing all criminal matters online. In contrast, in both Canada and the US all e-hearings are private, while Australia live-streams certain justice matters but keeps criminal matters private.

Some countries implementing alternative measures into their system are recognizing benefits while others are uncertain about the new processes. COVID-19 has increased the court's use of technology, but cases nonetheless had to be prioritized on an urgent-nonurgent basis during the lockdown.

PRIORITIZING CRIMINAL COURT MATTERS

Courts around the world have remained 'open' as they are an essential service (Humphreys, 2020); however, any personal services and alternative delivery methods are only currently being applied to matters deemed urgent–which means the criminal courts cannot fully attend to all justice matters even during the period of social distancing.

Due to the degree of severity that COVID-19 presents in Australia, Canada, the US, and the UK, the definition of 'urgent' varies. Most matters related to criminal cases, including bail hearings and detention reviews, are considered urgent because they involve people being held in custody awaiting trial (Humphreys, 2020). The prioritization of urgency is of obvious concern for defendants being held in custody but also to the courts, as they fear delays could violate precedents set under the 'old reality'.

TRIAL DELAYS

Trial delays existed before COVID-19 but now present a more serious concern regarding the court system's ability to uphold the right to a speedy trial during and post pandemic.

Canada's Supreme Court ruling in *R. v. Jordan* (2016) imposes limits on the time period between the issuing of charges and the start of a trial that, if not respected, will mandate the release of an accused – spiking concern for Canadian courts. The ruling, however, allows for extraordinary events. This means the Jordan limits do not apply to the current trial delays caused by the pandemic (Stefanovich, 2020).

In comparison, the Sixth Amendment to the United States Constitution (U.S. Const. amend. VI, 2007), which sets forth rights related to criminal prosecutions, offers a similar precedent on time limits. Unlike Canada, however, the US's precedent has no clause for extraordinary events, which means that if a defendant's rights are violated during a pandemic the associated conviction or sentence will be thrown out of court (Reynolds, 2020). With limited execution of effective scheduling, violations could increase for current and future trials.

One thing seems certain, criminal courts will face severe backlog as they emerge from the grips of the pandemic. While post-pandemic use of technology may be employed to counter the backlog, such decisions must be made now as the justice systems may soon be at a breaking point (Bowcott, 2020).

CONCLUSION

COVID-19 is impacting the daily operations of criminal court systems around the world. Courts turning to alternative delivery methods are discovering the challenges of adapting, as evidenced by the "significant slowdown of the justice system" (Surprenant, 2020).

Many countries are still in the early stages of the pandemic, and the possibility for continuing disruptions of criminal court operations is evident. The pandemic serves as a reminder that criminal court systems need to be ever adaptive. As the pandemic continues, the delivery of court services remains dependant on the extent of social-distancing restrictions. Some criminal courts want to resume normal operations quickly; others want to extend the 'new' measures into their post-pandemic criminal courts to enhance the overall efficiency of their system - but this must not come at the expense of justice (Zalnieriute & Bell, 2019). ■

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RÉSUMÉ

The Impact of COVID-19 on Criminal Court Systems Around the World

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La COVID-19 présente un défi unique aux systèmes judiciaires criminels vis-à-vis leurs méthodes traditionnelles ‘face-à-face’ de prestation des services. Partout dans le monde, les tribunaux ont suspendu en partie leurs activités et ont commencé à traiter les affaires judiciaires en fonction de leurs urgences, ce qui soulève des préoccupations quant aux retards de procès.

COVID-19: Implications for the Criminal Justice System

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No one knows how the Covid-19 pandemic will play out after a vaccine or cure is found, however, there is little doubt that significant changes will be on the horizon and have a substantial and lasting impact on the criminal justice system.

When we think about the pandemic currently upon us, a virus that has redefined our definition of 'normal', it is easy to become fixated on our perceptions of how we are affected. Globally, everyone has experienced the impact of COVID-19. Discussion and speculation on what our world will look like post-COVID-19 abound. But when we look beyond ourselves, another question arises: in what ways will the impact of the pandemic on our systems and institutions alter society's ability to move forward? Gone are the days of blowing out candles on a non-familial birthday cake, but what else will come to bear? Even when a vaccine becomes available, individuals and institutions will have been shaken to the point of not quickly forgetting this time in our lives. It may be speculated that this is a wound that will not quickly heal.

As the world prepares to recover, a change in direction for individuals and institutions will be necessary; the 'status quo' is no longer a viable reality. The criminal justice system is no exception. Has COVID-19 been the paradigm shift required to force necessary and more contemporary change onto the justice system domestically and around the world? Amid a pandemic and without the benefit of hindsight, modest predictions of a recovery, post-COVID-19, are all that can be offered today.

Many areas of the justice system, we can safely predict, will be altered going forward. Two such areas include changes to incarceration for offenders and amendments to case law because of cases adjudicated in times of, or because of, a pandemic.

INCARCERATION ANALYSIS

The health and well-being of individuals deemed vulnerable under normal circumstances, such as those in jail or prison, is even more compromised during a pandemic, as exemplified recently in the *Advanced Journal of Emergency Medicine* (Asghari & Saeedi Tehrani, 2020, p.2).

As Assistant Professor, Lisa Kerr, Faculty of Law at Queen's University notes, this pandemic has shown us how inmates become increasingly "medically vulnerable" while incarcerated (Kerr, 2020). Because of the pandemic, continues Kerr, "Ontario moved quickly to reduce its jail population: from March 16 to April 9, numbers fell from 8,344 to 6,025" with inmates being granted early release through bail applications (2020). Kerr offers the example of the case of "D". D is an inmate in Ontario who suffers from underlying medical conditions and was granted a medical release during the pandemic. This falls within three criteria for early prisoner release as outlined by the World Health Organization

(WHO) and the High Commissioner of Human Rights: "underlying health conditions, low-risk profiles, and those with imminent release dates" (Kerr, 2020). Kerr states that the WHO and High Commissioner of Human Rights, "calls on public authorities" to give priority to the release of prisoners under these conditions (2020). This, according to Kerr, is a precedent with which the Queen's Law Clinic is working "to assist other vulnerable prisoners" (2020).

Has the pandemic put to the test pre-existing flaws in correctional institutions such as overcrowding, and healthcare frailty, among other institutional factors? Such questions are supported by the comments of Dr. Homer Venters from his work with and within US prison facilities. Venters emphasizes the need to create quarantine areas within prisons during the pandemic, which is only possible if some of the inmates are released (Venters, 2020, 9:13). The situation is further complicated by the fact "the virus has arrived in places that already have broken health systems" (2020, 11:30). One could surmise that the current pandemic has highlighted the need to give closer review and attention to healthcare requirements and overcrowding protocols in correctional facilities during times of a pandemic and at 'the best of times'.

CASE LAW ANALYSIS

Reforms to case law brought about by cases tried during times of, or because of, COVID-19 may also have long-term ramifications on the justice system. Lawsuits against insurance companies disputing coverage; abuse-negligence and lack of response in certain nursing homes; students looking to schools for tuition refunds; and travel- and tourism-refund disputes are some examples of lawsuits that will bombard the judicial system during and after the pandemic (Gollom, 2020). We may also look to the already-ongoing lawsuits against certain cruise ship operators considered to have downplayed the risks of COVID-19 (Bronstad, 2020). Could such circumstances encourage similar claims in the future or affect precedent in case law related to illness experienced by a traveller or perceived negligence of operators within the travel and tourism industry? It is fair to say that cases adjudicated during a pandemic may present interesting questions and engender much speculation about judicial precedent and how the legal landscape may be altered in the face of COVID-19 court rulings.

Another possible area of change to case law is the field of family law. One example is found in the recent dispute of a divorced couple who decided to live together with their three children during the pandemic (Black, 2020). One parent was felt to have disregarded safety precautions and was then barred from the family home when, under normal circumstances, the custody was shared (Black, 2020). The judge was cautious in this ruling, highlighting the fact that the decision was being made in the unprecedented times of the pandemic (2020). Several other news stories of parents who share custody have also emerged in the media. In these, custody arrangements have been disputed or impacted because of a difference of opinion between the parents over matters of safety or precaution. Could such differences in parenting styles manifest as or provide the basis for altered custody arrangements or changes to family case law in the future?

CONCLUSION

Uncertainty abounds concerning how individuals and institutions will function post-COVID-19 and what changes will be implemented going forward through the current pandemic. It could be assumed that significant changes will be on the horizon within all institutions, shifting our perspectives, reshaping laws, and, most notably, for this conversation, having a substantial and lasting impact on the criminal justice system. Changes within correctional institutions, the development of early prisoner-release programs, and an abundance of new case law may be on the horizon. Even after a vaccine, or cure, is developed and administered, this is not the last we have heard of COVID-19 insofar as it relates to the criminal justice system. ■

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RÉSUMÉ

COVID-19: Implications for the Criminal Justice System

CATHARINE PANDILA
Mount Royal University

Personne ne sait comment la pandémie de Covid-19 se déroulera après qu'un vaccin ou un remède aura été découvert, mais il ne fait guère de doute que des changements importants se feront à l'horizon et auront un impact substantiel et durable sur le système de justice pénale.

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